



STATE BOARD OF EQUALIZATION

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March 13, 2007

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Third District, Rolling Hills Estates

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Fourth District, Los Angeles

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State Controller

RAMON J. HIRSIG
Executive Director

Dear Interested Party:

Staff has reviewed comments received in response to our February 8, 2007, interested parties meeting regarding the proposed amendments to Regulation 1803, *Application of Tax*. After considering the comments and information provided to date, staff does not recommend amendment to Regulation 1803.

Enclosed is the *Second Discussion Paper* on this subject. This document provides the background, a discussion of the issue, and explains staff's recommendation in more detail.

A second interested parties meeting is scheduled for **March 22, 2007 at 1:00 in Room 122** to discuss the proposed amendments to Regulation 1803. If you are unable to attend the meeting but would like to provide input for discussion at the meeting, please feel free to write to me at the above address or send a fax to (916) 322-4530 before the March 22, 2007 meeting. If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting. If you plan to attend the meeting on March 22, or would like to participate via teleconference, I would appreciate it if you would let staff know by contacting Ms. Lynda Cardwell at (916) 324-2924 or by e-mail at Lynda.Cardwell@boe.ca.gov prior to March 19, 2007. This will allow staff to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing.

Any comments you may wish to submit subsequent to the March 22, 2007 meeting must be received by **April 6, 2007**. They should be submitted in writing to the above address. After considering all comments, staff will complete a formal issue paper on the proposed amendments to Regulation 1803 for discussion at the **Business Taxes Committee meeting** scheduled for **May 31, 2007**. Copies of the formal issue paper will be mailed to you approximately ten days prior to this meeting. Your attendance at the May Business Taxes Committee meeting is welcomed and encouraged. The meeting is scheduled for **9:30 a.m.** in Room 121 at 450 N Street, Sacramento, California.

Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Business Taxes Committee" page on the Board's Internet web site

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(<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of Committee discussion or issue papers, minutes, a procedures manual and calendars arranged according to subject matter and by month.

We look forward to your comments and suggestions. Should you have any questions, please feel free to contact Ms. Leila Khabbaz, Supervisor, Business Taxes Committee Team at (916) 322-5271.

Sincerely,

Jeffrey L. McGuire, Chief
Tax Policy Division
Sales and Use Tax Department

JLM: lrc

Enclosures

cc: (all with enclosures)

Honorable Betty T. Yee, Chairwoman, First District (MIC 71)
Honorable Judy Chu, Ph.D., Vice Chair, Fourth District
Honorable Bill Leonard, Member, Second District (MIC 78)
Honorable Michelle Steel, Member, Third District
Honorable John Chiang, State Controller, C/O Ms. Marcy Jo Mandel (MIC 73 + via e-mail)
Mr. Alan LoFaso, Board Member's Office, First District (via e-mail)
Mr. Mark Ibele, Board Member's Office, First District (via e-mail)
Mr. Chris Schutz, Board Member's Office, Fourth District (MIC 72)
Mr. Steve Shea, Board Member's Office, Fourth District (via e-mail)
Ms. Margaret Pennington, Board Member's Office, Second District (via e-mail)
Mr. Lee Williams, Board Member's Office, Second District (MIC 78 and via e-mail)
Mr. Ken Maddox, Board Member's Office, Third District (via e-mail)
Mr. Neil Shah, Board Member's Office, Third District (via e-mail)
Ms. Melanie Darling, State Controller's Office (via e-mail)
Mr. Ramon J. Hirsig (MIC 73)
Ms. Kristine Cazadd (MIC 83)
Ms. Randie L. Henry (MIC 43)
Mr. Robert Lambert (MIC 82)
Ms. Janice Thurston (via e-mail)
Ms. Jean Ogrod (via e-mail)
Mr. Jeff Vest (via e-mail)
Mr. David Levine (MIC 85)
Mr. Randy Ferris (MIC 82)
Ms. Trecia Nienow (MIC 82)
Ms. Sharon Jarvis (MIC 82)
Mr. Tim Treichelt (MIC 82)
Ms. Carole Ruwart (MIC 82)
Mr. Cary Huxsol (MIC 82)

Mr. Steve Ryan (MIC 85)
Mr. Todd Gilman (MIC 70)
Mr. Dave Hayes (MIC 67)
Ms. Freda Orendt (via e-mail)
Mr. Stephen Rudd (via e-mail)
Mr. Joseph Young (via e-mail)
Mr. Vic Anderson (MIC 44 and via e-mail)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Khabbaz (MIC 50)
Ms. Lynda Cardwell (MIC 50)
Mr. Charles Arana (MIC 50)

SECOND DISCUSSION PAPER

Discussion of Regulation 1803, *Application of Tax*, regarding the application of local sales and use tax

I. Issue

Should Regulation 1803 be amended to reclassify retail transactions involving goods shipped into California from outside the state, with title passing outside the state, as subject to local sales tax rather than local use tax when the out-of-state retailer's place of business in California participates in the sale?

II. Staff Recommendation

Staff recommends that the Board of Equalization (Board) make no change to Regulation 1803. Staff's recommendation is supported by the California Retailers Association (hereafter, CRA) and the California State Association of Counties (hereafter, CSAC) and is firmly established by the following:

- The current provisions of Regulation 1803 that require the character of the local sales or use tax to be the same as the character of the state sales or use tax are supported by the applicable California statutes and accurately reflect the Board's long-standing interpretations, policies, and procedures.
- The regulations under discussion were never invalid. There is no evidence that the history presented by Mr. Albin C. Koch, Special Tax Counsel, MuniServices LLC (hereafter, MSLLC) regarding transactions from 1956 through 1970 is accurate. In fact, staff has found Board documentation and statements from relevant case law to the contrary (see discussion starting on page 4).
- In determining where to allocate local tax revenues, the tax due on a transaction must first be characterized as either sales tax or use tax. The "place of sale" allocation rules are for determining where to allocate local sales taxes once they are determined to apply, not for determining the character of the tax.
- Regulation 1628, *Transportation Charges*, subdivisions (b)(3) and (b)(4), makes specific the application of tax to charges for transportation by facilities of the retailer and charges for transportation by a carrier, with title transferring at the destination. The provisions do not invalidate or contradict the title transfer provisions of Regulation 1620 or those of Regulation 1803.
- The proposed changes would place an undue burden on retailers and have an unwelcome impact on most jurisdictions, as discussed in this paper and the CRA and CSAC submissions (see Exhibits 4 and 5, respectively).

III. Other Alternative Considered

Amend Regulation 1803 to impose local sales tax on sales or purchases in which title passes outside the state whenever there is local participation in the sale, whether or not state use tax applies, as proposed by MSLLC. The proposal is also supported by Mr. Robert E. Cendejas, Attorney at Law, (hereafter, Mr. Cendejas) representing the City of Ontario. As proposed, although state use tax may apply, if the place of sale is in a city or county imposing a local tax,

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local sales tax will apply whenever there is local participation¹ in the sale. Local use tax will apply only when the retailer's activities in the state do *not* constitute negotiation of, or participation in, the sales transaction (see Exhibit 1). For consistency and regulatory support, MSLLC also proposes that Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*, subdivision (a)(3) be amended, as reflected in Exhibit 1, to remove any reference to title passing in California.

IV. Background

Regulation 1803 interprets and makes specific the application of local sales and use taxes to sales and purchases of tangible personal property (property) established by Revenue and Taxation Code (RTC) sections 7202 and 7203. As authorized by RTC sections 7202 and 7203, California cities and counties are allowed to impose a local sales tax and a local use tax by adopting a local ordinance under the terms of the Bradley-Burns Uniform Local Sales and Use Tax Law (Local Tax Law) enacted in 1955. All cities and counties in this state have adopted such an ordinance.

Similar to the State Sales and Use Tax Law (State Tax Law), the Local Tax Law imposes local sales tax on every retailer for the privilege of selling property at retail in the county. Retailers making retail sales in a county² are subject to local sales tax on their sales transactions and are required to remit such taxes to the Board. A complementary and mutually exclusive local use tax is also imposed upon the storage, use or other consumption in the county of property purchased from any retailer for storage, use, or other consumption in the county. A city is authorized under the Local Tax Law to impose a city sales tax on retailers for the privilege of selling property at retail in the city. A city is also authorized to impose a city use tax on the storage, use, or other consumption in the city of property purchased from a retailer for storage, use, or consumption in the city.

Under RTC section 7202(b), the sales tax portion of any county ordinance adopted must, with limited exceptions, contain provisions identical to those contained in Part 1 (commencing with section 6001) insofar as they relate to sales taxes. RTC section 7203(a) requires that the use tax portion of any county ordinance adopted contain provisions identical to those contained in Part 1 (commencing with section 6001) insofar as they relate to use taxes. That is, the Local Tax Law follows the State Tax Law.

Under Regulation 1803(a)(1), the local sales tax may apply *only* if the state sales tax is applicable. Thus, the local sales tax applies when the state sales tax applies and the local use tax applies when the state use tax applies. When the state sales tax is *not* applicable, the local sales tax is also *not* applicable. Under Regulation 1803(b)(1), use tax applies if title to the property purchased passes to the purchaser at a point outside this state.

¹ "Participation" includes taking the order or negotiating the sale.

² The sale occurs in the city, county, or city and county under the provisions of RTC section 6006(a).

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On October 11, 2006, the Board of Equalization (Board) held a rehearing on a petition filed by the Cities of Los Angeles and San Jose (Petitioners) for reallocation of local use tax revenues reported and allocated by a specified retailer. At issue was whether the sales tax or use tax applied to the retailer's transactions. After hearing the arguments by the Petitioners and staff, the Board referred the matter to the Business Taxes Committee for examination of the provisions of Regulation 1803, as well as the statutory and regulatory authority for applying the local sales tax to transactions such as those under discussion.

Staff met with interested parties on February 8, 2007, to discuss Regulation 1803 and the statutory and regulatory authority for the application of local use tax to transactions in which there is local participation in the sale, but title to the property transfers outside the state. At the meeting, MSLLC reiterated its contention that prior to 1971, subdivision (A)(2)(a)(1) of California Administrative Code section 2015 (Ruling 55) provided that the state sales tax applied to sales that originated at a place of business in this state, with fulfillment by shipment from out of state. Since the local tax follows the state tax, the local sales tax would also apply to this type of transaction.

MSLLC further explained that when Ruling 2203 (adopted when the Local Tax Law first went into effect in 1956) was renumbered to Regulation 1803 and Ruling 55 (Cal. Adm. Code section 2015) renumbered to Regulation 1620, *Interstate and Foreign Commerce*, Regulation 1803 was revised to eliminate the cross-reference to Ruling 55, and a requirement added that title had to pass in California for local sales tax to apply³.

Essentially, MSLLC believes that from 1956 through 1970, Ruling 55, the predecessor to Regulation 1620, did *not* require that title transfer in California for state and local sales tax to apply to sales of property negotiated at an instate place of business of the retailer. Accordingly, MSLLC requests that the Board amend Regulation 1803 to clarify the regulation to reflect the original and continuing language of RTC sections 7202 and 7205 in accordance with how they were originally interpreted and applied by the Board between 1956 and 1970. However, MSLLC did not provide any corroboration to support its claim that Board policies and interpretations from that period differed from the policies and interpretations currently applied by the Board.

Following the meeting, submissions were received from the CRA and CSAC, in addition to those received from MSLLC and Mr. Cendejas. The submissions from CRA and CSAC request that Regulation 1803 *not* be amended as proposed by MSLLC (see Exhibits 4 and 5, respectively). The submissions from MSLLC and Mr. Cendejas request that Regulation 1803 be amended and that the amendments be retroactive (Exhibits 2 and 3, respectively). (Note, Exhibit 2 does not include Exhibit B of the MSLLC submission. That exhibit is shown as Exhibit 1 for this paper.)

The Business Taxes Committee is scheduled to discuss the proposed changes to Regulation 1803 at its meeting on May 31, 2007.

³ Staff notes that the requirement that title had to pass in California for the local sales tax to apply has been a specific provision of Regulation 1803 and its predecessor Ruling 2203 since its adoption by the Board in 1956.

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V. Discussion

In its February 20, 2007 submission, MSLLC restates its belief that Ruling 2203, the predecessor to Regulation 1803, had a different meaning and effect at its inception than at the present time. Thus, MSLLC proposes an amendment to Regulation 1803 to return the regulation to what MSLLC maintains is the original interpretation of the applicable statutes.

However, staff does not believe there is justification for amending Regulation 1803. There is no indication that the current provisions of the regulations are invalid, or that historically or otherwise the Board has incorrectly or differently interpreted the applicable provisions of the State or Local Tax Law. In researching Ruling 55 (predecessor to Regulation 1620), Ruling 58 (predecessor to Regulation 1628), and Ruling 2203 (predecessor to Regulation 1803), staff found that the prior rulings, the applicable California Administrative Code Sections, and the superseded regulatory provisions were consistently interpreted and applied so that the state sales tax did *not* apply when sales were negotiated in the state, but title passed outside the state, and that there was no arbitrary or unsupported inclusion of the relevant title transfer provisions.

Relationship of Regulation 1620 and Regulation 1803. There is no indication that during the period of 1956 through 1970, the application of the provisions of Ruling 55, the predecessor to Regulation 1620, differed materially from the current application of the provisions of Regulation 1620, as they relate to title transfer or when and where a sale occurs. During that time, determining where title to the property transferred was just as instrumental in determining where the sale occurred and whether sales tax applied as it is today.

In the Board's explanatory guidance dated April 21, 1952 (*Sales Tax General Bulletin 52-5*), from Mr. Harry L. Say, Sales Tax Administrator, to headquarters and field staff, the subject of whether sales tax applied to the type of transactions currently under discussion was clarified and an interpretation of Ruling 55, *Interstate and Foreign Commerce*, issued. As clarified in the correspondence, "if title to the property passes to the purchaser at a point outside California, the sale, as defined in Section 6006 of the Sale and Use Tax Law, does not occur in this State." Where the title transferred was as relevant in 1952 as it is now, even when there was instate participation in the sale.

Specifically, *Sales Tax General Bulletin 52-5* stated the following:

"Inquiries indicate some uncertainty as to the applicability of the sales tax with respect to sales of merchandise shipped to a consumer in California from a point outside of this State when there is participation in the transaction by a California retailer or by a California office or branch of an out-of-[s]tate retailer. If the title to the property (or possession under a conditional sales contract) passes to the purchaser outside of California, the sale, as defined in Section 6006 of the Sales and Use Tax Law, does not occur in this State. Since the tax is measured by the gross receipts from the sale of tangible personal property at retail in this State [emphasis in original] (Section 6051), the sales tax is inapplicable in such situations.

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“The fact that an office or representative of the seller in California accepts the orders or otherwise participates in the sale, although material as respects the determination of [the] interstate or intrastate character of the transaction under the sales tax portion of Ruling 55, cannot subject the seller to liability if the sale, as defined in Section 6006, occurs outside this State. This interpretation does not pertain to the use tax portion of Ruling 55. Normally, that tax would apply to the subsequent storage or use of the merchandise in this State, even though the sale occurs outside of California.”

Not only does it appear staff and others followed the interpretation of Ruling 55 when determining whether sales or use tax applied to interstate commerce transactions, the Board requested that the interpretation be incorporated into the language of Regulation 1620 when Ruling 55 was renumbered as Regulation 1620 in 1970. The inclusion of the title transfer language in renumbered Regulation 1620 was evidently neither arbitrary nor unsupported.

The minutes of the December 8, 1970 Board meeting at which Ruling 55 was renumbered as Regulation 1620 indicate that *Sales Tax General Bulletin 52-5* represented the Board’s administrative interpretation of Ruling 55 from 1952 through 1970. As stated in the minutes:

“Assistant Chief Counsel T. P. Putnam explained to the Members that Regulation 1620 is proposed as part of the current revision program upon which the Board has embarked to update and restructure its Sales and Use Tax Rulings. It incorporates the provisions of Ruling 55 and related Sales Tax General Bulletin 52-5 and reflects 1970 legislation adding Section 6396 to the Sales and Use Tax Law which exempts the sale of property which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside the State by delivery by the retailer to a carrier, whether that carrier is hired by the purchaser or not.

“Mr. Putnam stated that the staff only recently has received a number of suggested changes in the regulation and he requested that, following the hearing this day, the matter be taken under submission in order to allow the staff the opportunity to review these suggestions....

“Accordingly, upon motion of Mr. Lynch, seconded by Mr. Nevins, and unanimously carried (Mr. Lynch and Mr. Flournoy absent), the Board ordered that the matter be taken under consideration.”

The minutes of the December 9, 1970 Board meeting state the following:

“Assistant Chief Counsel T. P. Putnam explained to the Members that, following the hearing on December 8, 1970 with respect to Regulation 1620, the staff had redrafted the regulation to incorporate some minor clarifying language therein; and he briefly reviewed these amendments for the Board.

“After proceedings had in accordance with the Administrative Procedure Act, upon motion of Mr. Lynch, seconded by Mr. Leake, and unanimously carried (Mr. Flournoy

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absent), the Board amended and renumbered Section 2015 [Ruling 55] as Section 1620, INTERSTATE AND FOREIGN COMMERCE, in new Article 11, Subchapter 4, Chapter 2, Title 18, California Administrative Code. A copy of this regulation, as amended, is incorporated in these minutes by reference.”

Regulation 1620(a)(1), **Sales Tax**, as amended and renumbered December 9, 1970, in part to incorporate the interpretation of Ruling 55 contained in *Sales Tax General Bulletin 52-5*, included the following provision relevant to the transactions under discussion:

“If title to the property sold passes to the purchaser at a point outside this state, or if for any other reason the sale occurs outside this state, the sales tax does not apply, regardless of the extent of the retailer’s participation in California in relation to the transaction.”

Since Ruling 2203, the predecessor to Regulation 1803, cross-referenced Ruling 55 when determining the character of the local tax, it is understandable that Ruling 2203 contained the following provision when it was adopted by the Board on May 1, 1956, four years after *Sales Tax General Bulletin 52-5* interpreted Ruling 55:

“In any case in which state sales tax is inapplicable under Ruling 55 [predecessor to Regulation 1620], state-administered local sales tax is inapplicable. Thus, if title to the property passes to the purchaser at a point outside this State, state-administered local sales tax does not apply regardless of participation in the transaction by a California retailer.”

Thus, there is no ambiguity between the provisions of Ruling 55 and Regulation 1803 between 1956 and 1970. Under both regulations, the state sales tax and the local sales tax did *not* apply where title to property passed outside this state. In 1959, the Court of Appeal for the Third Appellate District affirmed that the Board correctly applied the state use tax in these circumstances. In *Diebold v. State Bd. of Equalization* (1959) 168 Cal. App. 2d 628, 631 the court examined transactions in which customers placed orders through a California office of an out-of-state retailer. The goods were delivered directly to the customers in California from the retailer’s manufacturing location in Ohio. (*Ibid.*) The Court found that the participation by the local office of the retailer was sufficient to support the sales tax on Constitutional grounds if a state so chose, as explained in *Norton Co. v. Dept. of Revenue of the State of Ill.* (1951) 340 U.S. 534. (*Diebold, supra*, at 633.)

However, in order to impose the sales tax under California law, more was required. On transactions in which Diebold held title to the goods until after delivery to the customer in California, the transactions were held to be subject to state sales tax. (*Id.* at 636.) For three transactions where title transferred to the California buyer upon delivery to the common carrier in Ohio, the court held that, since title passed outside of California, sales tax was not applicable, even though the local office of the retailer participated in the sales. (*Id.* at 639.)

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Relationship of Regulation 1628 and Regulation 1803. MSLLC also appears to have misinterpreted and taken out of context the language of Regulation 1628, subdivision (b)(3), regarding when a sale occurs, and the place of sale provisions of subdivision (b)(4). In its February 20, 2007 submission (Exhibit 2), MSLLC restates its contention that the provisions of Regulation 1628, subdivision (b)(4), prohibit the application of local use tax to the type of transactions under discussion. MSLLC also contends that the provisions of the regulation support the premise that “geographic title passage” is not relevant in determining whether sales tax or use tax applies to these transactions. Staff does not agree with MSLLC’s interpretation of the meaning and intent of subdivision (b)(3) or (b)(4).

Previous versions of Regulation 1628 and Ruling 58 (Cal. Adm. Code section 2028), predecessor to Regulation 1628, interpreted and made specific the application of tax to transportation charges authorized by RTC sections 6011, 6012, and as of 1965, section 6010.5. The place of sale provisions of Regulation 1628 and the title passage provisions of Ruling 58 were intended for determining whether delivery and transportation charges were included in the taxable sales price of the property sold or included in the taxable gross receipts of the sale, not whether sales tax instead of use tax applied to a transaction. Nor did the place of sale provisions determine where the taxes should be allocated when the transactions were subject to the state use tax. Even when Ruling 58 was amended and renumbered as Regulation 1628 in 1971, the intent and meaning of the regulation did not change. That is, the provisions of Regulation 1628 are to be used to determine how tax on delivery charges should be calculated once the character of the tax is determined, not to determine *whether* sales tax rather than use tax applies.

As provided by Ruling 58, *Delivery Charges* (predecessor to Regulation 1628), when it was adopted by the Board on January 1, 1945, effective July 1, 1943:

“Tax does not apply to transportation charges separately stated if the transportation occurs after the sale or purchase of the property is made. A deduction may be taken for transportation charges when property is sold f.o.b. the retailer’s place of business or other point from which the property is shipped to the purchaser, provided that:

- a. the “sale” or “purchase” as defined in the Sales and Use Tax Law is made at the f.o.b. point,
- b. the transportation charges are stated separately from the sales price, and
- c. the transportation charges represent either the actual amounts prepaid to the carrier by the retailer for the purchaser or bona fide charges for delivery by means of facilities operated by the retailer.

“A deduction cannot be taken, however, for the cost of transportation of the property prior to its sale or purchase. When property is sold for a delivered price ‘f.o.b. destination’ no deduction may be taken for freight, express, postage, cartage or other transportation costs incurred in delivering the property to the purchaser, whether paid directly by the retailer to the carrier, paid to the carrier by the purchaser and deducted by

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him from the sales invoices as a ‘freight allowance’ or incurred by the retailer in the operation of his own delivery facilities.”

The meaning and intent of the language of Ruling 58 and renumbered Regulation 1628 is also supported by *Sales Tax General Bulletin 54-28*, titled Ruling 58, *Delivery Charges*, and dated November 22, 1954. As provided in the bulletin:

“In determining the point at which the ‘sale’ or ‘purchase’ is made, the intention of buyer and seller as to when title passes is controlling. If each of the following conditions exists, the sale or purchase will be deemed made prior to the transportation of the property unless a contrary intention of the parties is shown by express terms of the contract of sale or otherwise:

1. The terms of the sale are f.o.b. the mill, retailer’s place of business, or other shipping point.
2. The property is delivered to the purchaser by a carrier or other person not the seller’s agent, under an express or implied contract with either seller or buyer.
3. The transportation charges are separately stated on the invoice or other document of sale presented to the purchaser, and bear a reasonable relation to the actual cost of the transportation.”

It is important to understand that the place of sale allocation rules of Regulation 1802 and where the sale occurs for the purposes of distributing the district sales tax under Regulation 1822, *Place of Sale for Purposes of Transactions (Sales) and Use Taxes*, do not invalidate the importance of where title passes; nor do these rules or provisions determine whether sales or use tax applies to a transaction.

The statement in Regulation 1628, subdivision (b)(4), PLACE OF SALE, that “[f]or the purposes of the state Sales and Use Tax Law (but not for the purposes of the Bradley-Burns Uniform Local Sales and Use Tax Law nor for the purposes of the Transactions and Use Tax Law) the place of the sale or purchase of tangible personal property is the place where the property is physically located at the time the act constituting the sale or purchase takes place,” simply means the provision does not impact or change the “place of sale” for purposes of allocating local sales taxes or district sales taxes. When applying the place of sale allocation rules in Regulation 1802 and allocating the local sales tax, it is irrelevant that the property may not be physically located in the local jurisdiction where the local sales tax is to be allocated when the sale or purchase occurs. However, whether title passes in California and/or the sale occurs in California is *not* irrelevant for the purposes of Regulation 1628 or Regulation 1620. Nor is it irrelevant for the purposes of Regulation 1802 or Regulation 1803.

Relationship of Regulation 1802 and Regulation 1803. Regulation 1802 interprets and makes specific the place of sale allocation rules established by RTC section 7205. The regulation does *not* interpret and make specific the application of tax established by RTC sections 7202 and 7203; Regulation 1803 interprets those sections.

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The “place of sale” and allocation rules of Regulation 1802 are intended for determining which city, county, or city and county should receive the local sales tax revenues once it is determined that the local sales tax is applicable. They do not determine whether a transaction is subject to sales or use tax. Rather, the rules address the allocation of local tax revenues among the California cities and counties once the character of the local tax is determined.

When is a seller’s permit issued to an out-of-state retailer? RTC section 6066(a) provides that a retailer must obtain a permit for every location at which it intends to engage in the business of selling tangible personal property in California (i.e., makes sales that occur in California). Under Regulation 1699, *Permits*, subdivision (a), every person engaged in the business of selling property subject to California sales tax, and only a person actively so engaged, is required to hold a permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. Businesses from out of state that maintain a stock of goods in California from which orders are filled are considered “sellers” and are required to hold a seller’s permit. No additional permits are required for warehouses or other places at which merchandise is merely stored and which customers do not customarily visit for the purpose of making purchases and which are maintained in conjunction with a place of business for which a permit is held; but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale. However, permits are required for warehouses or other places at which merchandise is stored and from which retail sales of such merchandise negotiated out of state are delivered or fulfilled.

Currently, under the provisions of Regulation 1699, out-of-state retailers are issued a California seller’s permit when (1) they have a place of business in this state that either receives the customer’s order or delivers the property sold and (2) either ships the property sold from that place of business or from other in-state stocks of goods. If an out-of-state seller has a place of business in California that negotiates sales or takes orders, but does not maintain a stock of goods in California from where it fulfills the orders taken, the out-of-state retailer is not issued a seller’s permit; it is issued a *Certificate of Registration – Use Tax* for the purpose of collecting the California use tax due on its sales of property to California consumers.

What schedules do out-of-state retailers receive for reporting and allocating the taxes due on their interstate sales transactions? Relevant to this discussion, out-of-state retailers holding a California seller’s permit and that have sales that occur within California (intrastate sales subject to sales tax) as well as sales that occur outside California (interstate sales subject to use tax) are provided Schedule B – *Detailed Allocation by County of 1% Combined State and Uniform Local Sales and Use Tax*, and/or Schedule C – *Detailed Allocation by Suboutlet of Combined State and Uniform Local Sales and Use Tax* (copies attached as Exhibit 6) and instructed to segregate the local tax on intrastate sales from interstate sales. The local sales tax on intrastate sales is allocated to the sales location where the sale is negotiated (Schedule C or Line B2 of Schedule B), or, if the out-of-state retailer maintains no permanent place of business in California other than a stock of goods, to the warehouse or distribution center from which delivery is made.

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Retailers that are engaged in business in California, but are not required to hold a California seller's permit, generally hold a *Certificate of Registration – Use Tax*. The certificate is assigned to out-of-state retailers who do not maintain a stock of goods in California. Retailers that are engaged in business in this state, as defined by RTC section 6203, are required to identify the county of the purchaser on Schedule B for indirect distribution of local use tax through the countywide pool. Retailers who are not engaged in business in this state, but who have voluntarily registered to collect the use tax from their purchasers are requested to complete Schedule B. In those instances where the county is not identified, the local use tax is distributed by indirect allocation through the statewide pool.

When may local tax revenues be reallocated? As authorized by RTC 7209, the Board may (emphasis added) redistribute tax, penalty, and interest distributed to a county or city other than the county or city entitled to the revenues, but such redistribution shall not be made as to amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the Board obtains knowledge of the improper distribution. A date of knowledge of improper distribution can generally be established when (1) an inquiry is received from an inquiring local jurisdiction or its Consultant (IJC) for investigation of suspected improper distribution of local tax or (2) staff discovers factual information sufficient to support the probability that an erroneous allocation of local tax may have occurred, and the allocation is questioned. A date of knowledge (hereafter, DOK) is established when a Board employee questions the allocation.

Sales and Use Tax Annotation 702.1050⁴, 10/30/02, discusses the use of the term “may” in RTC section 7209. The annotation states the following:

“The word ‘may’ used in the legislation is to be given its common and ordinary meaning and to be construed as permissive or conferring discretion. It is to be construed as mandatory only when it appears from the terms of the statute in which it is used that it was the clear policy and intent of the legislature to impose a duty, and not simply to confer a discretionary power.

“Section 7209 was enacted not to confer reallocation authority upon the Board, but to put a limit on reallocations in order to avoid causing the losing city severe financial hardship. The legislative history of section 7209 indicates that the Legislature wanted the Board to have discretion in deciding whether or not to make a reallocation. Local tax revenue should not be reallocated in circumstances where the factual and legal issues that resulted in a prior misallocation are only just now being resolved. For instance, some transactions, like Internet sales, are evolving areas with new issues arising all the time. In view of the fact that the losing city will have already spent the money previously allocated to it, reallocations should not be made under such circumstances.”

⁴ Annotations are synopses of legal opinions and are intended to provide guidance in interpreting Board statutes and regulations as applied to specific factual situations. Annotations are not regulations of the Board and do not have the force or effect of law.

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The same would appear true for the types of transactions under discussion related to the “mass appeal” discussed on page 16. Under the MSLLC proposal, a retroactive application of the proposed change would result in the reallocation of local tax revenues from as far back as 1995 (there are also numerous inquiries with a DOK earlier than 1995). Although there would be no reduction in the total local tax revenues, adoption of the current proposal would result in shifts in local revenues among cities and counties, as well as shifts from county to county, resulting in major “winners” and “losers.” The losing jurisdictions would have spent the revenues received in the past and would not have taken into consideration such reallocation of funds in their current or future budgets. Shifting funds reallocated during the last twelve years among jurisdictions, would appear to be contrary to the intent of the sponsors of RTC section 7209, which staff believes was designed to prevent such a major impact on losing cities and counties. In many instances, it will likely cause a severe financial hardship on the losing cities and counties.

Staff notes that cases under appeal receive the greatest benefit from retroactivity since the DOK would go back to the date the inquiry was received. However, for cities and counties who followed the clear provisions of the regulation; or perhaps who submitted an inquiry, but did not appeal the Board staff’s denial, redistribution would be limited to the current quarter and the two preceding quarters. In other words, reallocation limitations are such that cases currently in the appeal process receive a greater benefit from a retroactive regulation change than those that followed the current provisions of the regulation.

Report issued by the Legislative Analyst’s Office (LAO). In its January 2007 report, the LAO identified the inequities and unproductive competition that can result from cities and counties competing with another for the local sales tax revenues generated by a business. If the proposed change were adopted and the tax due on the type of transactions under discussion were reclassified as local sales tax allocable to the instate place of business that participated in the sale, rather than to the location of the purchaser’s use of the property, there is a significant potential for the type of counterproductive activities identified in the LAO report (available at http://www.lao.ca.gov/2007/sales_tax/sales_tax_012407.pdf).

The LAO discussed problems associated with local agencies offering incentives to retailers to relocate to their jurisdiction. For example:

“One manifestation of unproductive competition is the use of sales tax rebates and other financial incentives by local agencies to sales tax-generating businesses locating within their borders. These have been used to encourage the relocation of sales offices and the creation of ‘buying companies’ for the purposes of diverting sales taxes. The use of financial incentives does not result in net benefits to a broader economic region within the state. It simply shifts existing sales taxes from one jurisdiction to another, the cost of government resources that could be used for other purposes....

“Over the years, when large retail establishments have considered relocation or expansion into a region, local governments have often competed against one another by offering the business ever more generous packages of incentives to operate within their

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borders. From a state standpoint, this competition among jurisdictions for sales tax revenues generally is unproductive. There is a finite market for retail spending within an economic region. Thus, the main result of the various incentives offered to the business is simply a relocation of the retail activity from one community to another—with no net gain in economic output or efficiency to the region or state as a whole. In addition, the cost of the economic incentives drain local government resources that otherwise would be available for public purposes.”

Considering the comments in the CSAC submission (see Exhibit 5), CSAC appears to agree with the LAO report, at least in the context of the transactions under discussion. As stated by CSAC,

“Counties believe there is no compelling reason to abandon the current, long-standing use tax allocation method, especially when one considers the number of jurisdictions the change would negatively affect and the way certain jurisdictions have begun kicking use tax revenues directly back to favored actors in the private sector.

“These proposals [proposals to amend both Regulation 1803 and 1802] would further increase the recent practice of local jurisdictions trading away enormous portions of sales tax, which is intended to provide public services and facilities, in exchange for companies consolidating their region—or state-wide purchasing activities in that jurisdiction. The purported reason for allocating taxes on a *situs* basis, according to the proponents of this proposal, is to ‘match local revenues with the infrastructure and service...costs associated with the location of a physical place of business....’ This ignores, first of all, the fact that the infrastructure and services provided to any given location come from a variety of jurisdictions, and, secondly, that up to two-thirds of the sales tax generated is kicked directly back to the taxed entity, money that regular citizens and other businesses would likely assume is helping provide important infrastructure and services to the region.

“Companies who incur large sales taxes are most likely to set up such a scheme, effectively shifting the tax burden to smaller actors. Most importantly, under these new schemes, which are well-documented in a recent report from the Legislative Analyst’s Office, the ‘physical place of business’ is often just an office through which purchasing paperwork is funneled, while the actual places of business and use are scattered throughout the region and the state, so encouraging such schemes actually takes revenue *away* from the jurisdictions responsible for supporting places of business, creating a detriment to the entire region. Under these proposals, the great portion of public agencies and private persons would be measurably worse off, and their approval would be seen as tacit endorsement of the practice by the Board of Equalization.”

If an out-of-state retailer’s place of business in California, which merely participates in sales that occur out of state, were required to hold a seller’s permit and the local tax due on the out-of-state retailer’s transactions reclassified as local sales tax, the potential for the type of competition noted in the LAO report would increase. Out-of-state businesses that have a location in California that previously did not generate local tax allocable to the sales office jurisdiction, but

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would now generate local sales tax, would be more attractive to local jurisdictions. That is, there would be more of an inducement for the local jurisdiction to offer an incentive to the business to move a sales office to its locality, which is precisely the type of activity the LAO and CSAC described as counterproductive.

Direct Impact on Retailers

Retroactive application – If the proposal by MSLLC were adopted by the Board, without an operative date, the proposed amendment to Regulation 1803 (and that proposed by MSLLC to amend Regulation 1802 for consistency purposes) would be implemented retroactively. Not only would there be a significant monetary and administrative impact on local jurisdictions, staff believes a retroactive amendment would place an undue administrative burden on retailers. First, although it would take some time to implement the change, the rule as to returns not yet due would go into effect immediately without warning to the affected retailers. Retailers whose sales retroactively became subject to local sales tax simply because the out-of-state retailer maintained a place of business in this state that participated in the sales of the out-of-state retailer, would retroactively become liable for the local sales tax, which was previously deemed local use tax—the liability of the purchaser.

Out-of-state retailers engaged in business in this state would likely continue to report tax as the Board has advised them to do for at least fifty years, thus creating numerous misallocation situations that would have to be corrected at great expense to taxpayers, the Board, and the local jurisdictions. At the same time, the retroactive effect of the proposed amendments would potentially create a large increase in the number of appeals filed by consultants on behalf of local jurisdictions who would benefit from the retroactive amendments.

Secondly, the affected out-of-state retailers would be required to file amended returns for the three quarters prior to the effective date of the regulation to reallocate the local tax based on the jurisdiction where the place of business that participated in the out-of-state retailer's transaction was or is located. These adjustments will require retailers to go back into their records and determine the amounts that need to be reallocated to the local jurisdiction of an instate office that participated in the sale rather than the “ship to” address retailers generally use. The retailers whose transactions are the subject of the “mass appeal” cases could be required to file amended returns or provide information related to their sales as far back as 1995 and, earlier in some cases. It is unlikely that the retailers will have this information readily available. If they do not have the information available, the Board could find itself in the unenviable position of having to decide whether to reallocate significant amounts of local tax based on inadequate evidence or estimates, which allocation decisions would have material financial impacts on winning and losing jurisdictions.

Variation between states – When there are many variations between the sales and use tax systems of various states, the burden on interstate businesses is increased. This would be the case if Regulation 1803 were amended, either retroactively or prospectively. Instead of simplifying California's tax system, the proposal will result in a more complicated tax system, as

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well as increased reporting and filing requirements for the retailer. Businesses that conduct business in many different states will experience a change to their current California reporting requirements and, as identified by the CRA in their submission (see Exhibit 4), such change will increase the burdens placed on the retailer. As stated in the CRA submission,

“Under existing rules in California, if a product is shipped from an out-of-state location to an address in California, the retailer collects the tax at the rate in effect at the recipient’s location. This is true even if the sale is ‘negotiated’ at an in-state location. This is consistent with the way virtually every other state in the country taxes this type of transaction.”

The more burdensome and confusing a state’s tax reporting schedules and reporting requirements, the more record-keeping requirements are placed on businesses. Many software programs (e.g., Vertex) used by businesses to report and allocate tax revenues are based on where the goods are shipped. As pointed out in the CRA submission, “maintaining a system whereby a retailer collects the local tax based on the ‘ship to’ address of the merchandise is the best approach. It provides certainty (i.e., the address where the merchandise is sent is clear, whereas the location where the sale was ‘negotiated’ is not necessarily known), and is much easier for retailers to collect the proper tax (the tax can be calculated using an automated system and this practice is consistent with that of other states).”

However, Mr. Cendejas does *not* agree that the proposed change would be more burdensome and confusing to retailers (see Exhibit 3). To the contrary, Mr. Cendejas believes that regarding the transactions under discussion as sales tax transactions would simplify and ease both the taxpayer’s and the Board’s compliance and administrative burdens. He believes “it is much easier for the taxpayer to allocate its local tax to the location(s) of its California sales office(s). This also matches the tax revenue with the business location utilizing valuable city resources such as police and fire protections.”

Additionally, Mr. Cendejas explains that:

“In order to properly allocate the tax as a use tax, the taxpayer must first determine if the property will be delivered from a California warehouse or from an out-of-state warehouse. If it is a California warehouse, then there is no controversy; the tax is allocated to the California sales office. However, if the property is delivered from the out-of-state warehouse the taxpayer must track the sales to their destination. This is not normally the way the taxpayer’s accounting records are set up. Having done that, the taxpayer must then determine in which county each of the sales belongs, in order to allocate the tax to the 58 countywide pools. This is that much more burdensome for a company headquartered out of state. This all becomes even more complex when a sales order is for goods that will be partly delivered from a California warehouse and partly delivered from an out of state warehouse.

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“Further, having to determine whether if it is the local sales tax or whether it is the local use tax that applies to sales orders received at the California sales office, is burdensome and serves no worthwhile purpose. The Board, cities and businesses have for many years supported situs allocation of the local tax. In this case, the local tax statutes, regulations and court decisions present a clear basis for determining the applicable tax to be a sales tax, which is allocated to the California place of business. This is both the practical and fair way to allocate the tax.”

Track each sale and the varied tax rates – If the proposed change is adopted, whether retroactive or prospective, out-of-state retailers will have to track each sale to determine which sales were subject to state and local use tax *and* which sales were subject to state use tax and local sales tax. If this amendment applied retroactively, the out-of-state retailer would have to reconstruct each sale where title passed outside California to determine which ones were subject to local sales tax and would potentially require reallocation. As stated in the CRA submission,

“Under the proposed change to [Regulation] 1803, retailers would be required to collect the tax at the rate in effect ‘where the sale was negotiated.’ This would be very problematic for several reasons. First, it is not always clear where a particular sale is ‘negotiated.’ There are many variables that can come into play to make this determination. It would be virtually impossible for retailers to program their computers/POS systems in a way to properly capture this information to determine which local tax to apply. Forcing sales associates to manually make determinations and tax calculations on every ‘sent’ sale is simply a non-starter—it will lead to numerous instances where the incorrect rate of tax is collected.

“Secondly, it would force multistate retailers to create one procedure when merchandise is shipped to California, and a different procedure when merchandise is shipped to any other state. This is obviously expensive and burdensome to retailers, and will not produce any additional revenue for the state and local governments in California. It will only result in a redistribution of local sales tax revenues.”

Sales tax imposed along with duty to collect use tax – The proposal, if adopted, will impose the liability for the local sales tax on the retailer and a duty to collect the state use tax (and when applicable, the district use tax). This will not only be confusing to all involved; it has the potential for reporting errors and misallocation of the applicable tax. Technically, invoices would be required to reflect the sales tax reimbursement collected for the local sales tax portion of the sale and the amount of district and state use tax collected for the use tax transactions. This would result in a need for reprogramming of any automated reporting systems.

Direct Impact on Local Jurisdictions

Use Tax Direct Payment Permits – Effective January 1, 1998, RTC section 7051.3 created a “use tax direct payment permit” to allow holders of the permit to issue a *use tax direct payment exemption certificate* (certificate) to any registered retailer or seller from whom they make

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purchases that are subject to use tax. Local jurisdictions that hold a use tax direct payment permit are allowed to issue certificates for their purchases subject to use tax and self-assess and report the use tax due on their purchases. The local use taxes are reported and subsequently distributed entirely to the jurisdiction in which the first use of the property occurs, rather than partially through the countywide pool.

Under the proposal, local jurisdictions (as well as businesses holding a *use tax direct payment permit*) would only be authorized to issue a certificate for their purchases from out-of-state retailers subject to state use tax when there is no participation in the purchase by an in-state place of business of the out-of-state retailer. If there were in-state participation in the purchase, the use of the certificate would not be authorized. Currently, approximately 100 local jurisdictions hold a *use tax direct payment permit*; there are approximately 46 businesses that hold such a permit. Staff cannot easily estimate the number or dollar value of transactions that could be affected.

However, it is clear that the business, county, city and county, or redevelopment agency holding a *use tax direct payment permit* will be limited in their use of the “permit” which would appear contrary to the purpose and spirit of RTC section 7051.3. In these cases, the holder of the permit would *not* be able to allocate the local use tax due on their use of property directly to the place of first functional use whenever the transaction qualifies as a local sales tax transaction under the proposal. Instead, the local jurisdiction where participation in the sale took place would receive the local tax revenues from the permit holder’s purchase of property, contrary to what would currently be the case.

Budgetary concerns – Like any business, all local jurisdictions must budget and plan for their financial and operational needs. Not only does a jurisdiction count on current and future tax revenues, it also counts on being able to keep the tax revenues that have been directly and indirectly distributed to them from the Board. By reclassifying the types of transactions under discussion as local sales tax transactions, the amount in the countywide pool for the periods covered by the “mass appeal” and any other inquiries qualifying for reallocation under the proposal, would be reduced. Such a reduction would particularly have an effect on recently incorporated cities that were *not* distributed local tax revenues during the period of the proposed retroactive reallocation.

Mass Appeal – Currently there are over 1,350 petitions for reallocation of local tax revenues based on the same premise under discussion in this paper. In 1995, there were approximately 883 local tax inquiries primarily involving out-of-state accounts registered to collect use tax under the Board’s tax programs. It appears that many of the 883 local tax inquiries subject to discussion in 1995 are part of the pending 1,350 petitions for reallocation of local tax revenues.

In 1996, an internal study was done by staff in response to a request by the Business Taxes Committee to identify the cities and counties that would be “winners” and “losers” if certain provisions proposed were given retroactive effect. Although it was the proponent’s contention that transactions negotiated at an in-state sales office, with the sales occurring outside the state, should be properly regarded as sales tax transactions, not use tax transactions, the proposal was

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to retain the character of the local tax as use tax. However, the proponent proposed to directly allocate the local use tax to the out-of-state retailer's local branch office where the order was taken, rather than to the jurisdiction in which the property was used. The proposal was not adopted.

Staff's study disclosed that allocating the tax to the sales office and away from the location of use had the effect of "concentrating" the tax in the hands of a few jurisdictions. The ratio of jurisdictions that would lose revenues to jurisdictions that would gain revenues under the proposal was 10:1. The study found that 47 cities and 1 county were identified as "winners" and 422 cities and 57 counties were identified as "losers." See Exhibit 7 for a list of the "winners" and "losers" taken from the 1996 study. The exhibit contains a listing of the cities, beginning with the city that would experience the largest increase in revenue, descending to the city that would experience the greatest loss in revenue, as projected for 1995. As shown, if the applicable 1995 local tax revenues were reallocated, San Ramon and Irvine would gain the most revenue (\$3,870,490 and \$2,895,638, respectively), with San Francisco and Los Angeles projected as losing the most revenue (\$927,939 and \$1,405,637, respectively).

If the changes proposed by MSLLC were retroactive, retailers and staff would be required to examine all transactions in which goods were shipped to California customers from out-of-state points, on a retroactive basis, to determine whether the local sales tax might apply, and if so, where the sales were negotiated. Redistribution would be made up to two quarterly periods prior to the quarterly period in which the Board obtained knowledge of improper distribution.

In the case of the "mass appeal," the Board obtained knowledge over twelve years ago for many of the appealed cases and almost 20 years ago for others. Accordingly, if the proposal were adopted and given a retroactive effect, the amount of local revenues that would be redistributed is very significant. Board staff will endeavor to have an estimate of the total projected 12-year revenue loss impact on losing jurisdictions identified in the 1996 study for inclusion in the *Formal Issue Paper* scheduled for distribution in May 2007.

Administrative Impact

Board Offices Administering Local Taxes – The Board's Local Revenue Allocation Unit (LRAU) is responsible for the initial allocation and distribution of all local taxes including those reported on sales and use tax returns, audit findings, and accounts receivable. As part of their duties, the unit analyzes the local tax schedules submitted with returns. The Board's Allocation Group is responsible for processing written inquiries from local jurisdictions and/or their representatives regarding questionable or disputed local tax allocations and investigates the allocations made by individual retailers as necessary.

Allocation Group: Staff Costs, Retroactive Application – If the proposed change were retroactive as proposed by MSLLC, there would be significant staff costs for investigation of the "mass appeal," and any other pending inquiries. To investigate and process inquiries for reallocation, staff from the Allocation Group estimates that each inquiry requires five (5) hours of staff time.

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This includes staff time to input, acknowledge and assign inquiries; review the file; contact taxpayers; to input adjustments to the Board's automated systems; prepare fund transfer worksheets and make fund transfer adjustments, and to prepare a response to the IJC and Access log input.

There are approximately 1,350 "mass appeal" inquiries, in addition to 40 cases currently in inventory. That amounts to 1,390 cases under appeal that would qualify for retroactive treatment if the proposal were adopted. The hours estimated to investigate and process the 1,390 cases is 6,950 hours. Based on the yearly hours per staff position of 1,800 hours, investigating and processing the cases currently under appeal would require four (4) one-year limited-term positions at a cost of **\$802,500** including the necessary equipment for the positions. For the second year and the following years, staff costs are estimated at **\$339,500 per year**, which includes 3.5 permanent positions at the Associate Tax Auditor level to handle an estimated 1,250 inquiries per fiscal year to be filed if the proposed change is made.

Allocation Group: Staff Costs, Prospective Basis – If the proposed change were on a prospective basis, although the Allocation Group would no longer be directly involved in the "mass appeal" inquiries; staff estimates there would be 1,250 inquiries filed per fiscal year under the proposed change. This would require 3.5 permanent positions at the Associated Tax level with an estimated cost for the first year of **\$374,500**, including the required equipment. For the second year and the following years, staff costs are estimated at **\$339, 500 per year**.

LRAU Staff Costs – There are approximately 1500 accounts (100 are accounts with local tax of \$20,000 and above and the rest report less than this amount per reporting period). If the proposal were adopted, the change to current policy would require the LRAU to identify affected accounts, all of which are out-of-state accounts, through a survey process. This will require staff to determine the accounts that need to be surveyed, to obtain the survey results, and to initiate registration changes by the Board's out-of-state district office. In most cases, this would require a change in registration for many of these accounts from a "SC" account (holder of a *Certificate of Registration – Use Tax*) to a "SR S" account (seller's permit for one sales/order location in-state) or a "SR Z" account (two or more sales/order locations in state).

The process of identifying the retailer accounts that require recoding and initiating the registration process will take approximately two years since nearly all communications will be done by mail. While the registration process is in progress, there will be a need to monitor the identified accounts to ensure that the local taxes are properly allocated in the interim registration period. This would require one (1) Tax Technician II (permanent position) to properly code accounts and make registration changes for new accounts, as well as the on-going process. The unit would also require one (1) Tax Auditor (permanent position) to work cases that develop from accounts that do not comply with the new requirements, which is expected to amount to 255 of the total accounts identified. Combined impact is estimated at **\$149,000 for the first year**, including the necessary equipment. For the second year and the following years, staff costs are estimated at **\$128,000 per year**.

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Both LRAU and the Allocation Group are fully funded by administrative fees paid by the local jurisdictions. The increase in the personnel costs for LRAU and the Allocation Group will be factored into the next year's charges to the jurisdictions. Any uncompensated charges this year will be made up as part of the reconciliation to be performed two years from now. There is no ceiling under the Local Tax Law for the administrative fees charged to local jurisdictions and that is where these additional costs would properly be allocated. In essence, the local jurisdictions that will lose revenue resulting from the proposed change to Regulation 1803 (approximately 90% of the jurisdictions), will not only lose funds, but will also pay higher administrative fees.

The proposed changes would also require taxpayer notification, as well as revision to manuals, returns, schedules, staff training materials, and pamphlets. These costs were not estimated, as this updating is considered routine when a regulation is revised.

VI. Summary

Under historical rulings, California case law, and existing Board regulations, the local sales tax does not apply to transactions in which the sale occurs outside this state, even if there is local participation in the sale. Currently under discussion is whether the local sales tax can be made to apply to transactions in which there is instate participation; however, the state use tax, not the state sales tax, is the applicable tax. Retailers, local governments, and other interested parties are welcome to submit comments or suggestions on this issue and are invited to participate in the second interested parties meeting scheduled for March 22, 2007, in Sacramento.

Prepared by the Tax Policy Division, Sales and Use Tax Department
Current as of 03/13/07

Proposed Amendments to Regulations 1802 and
1803

s 1802. Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes.

(a) In General.

(1) Retailers Having One Place of Business. For the purposes of the Bradley-Burns Uniform Local Sales and Use Tax Law, if a retailer has only one place of business in this state, all California retail sales of that retailer in which that place of business participates occur at that place of business unless the tangible personal property sold is delivered by the retailer or his or her agent to an out-of-state destination, or to a common carrier for delivery to an out-of-state destination.

(2) Retailers Having More Than One Place of Business.

(A) If a retailer has more than one place of business in this state but only one place of business participates in the sale, the sale occurs at that place of business.

(B) If a retailer has more than one place of business in this state which participates in the sale, the sale occurs at the place of business where the principal negotiations are carried on. If this place is the place where the order is taken, it is immaterial that the order must be forwarded elsewhere for acceptance, approval of credit, shipment, or billing. For the purposes of this regulation, an employee's activities will be attributed to the place of business out of which he or she works.

(3) Place of Passage of Title Immaterial. ~~If title to the tangible personal property sold passes to the purchaser in California,~~ It is immaterial that title to the tangible personal property sold passes to the purchaser at a place outside of the local taxing jurisdiction in which the retailer's place of business is located, or that the property sold is never within the local taxing jurisdiction in which the retailer's place of business is located.

* * *

S. 1803 Application of Tax.

(a) Sales Tax

(1) In General. Except as stated below, in any case in which state sales tax is applicable, state-administered Bradley-Burns uniform local sales tax is also applicable if the place of sale is in a county or city imposing a state-administered local tax. ~~Thus, If the place of sale as defined in Regulation 1802 is in a county or city having a state-administered local tax, the local sales tax shall apply whether or not the state use tax applies because if title to the~~

property sold passes or is deemed to pass at a point outside this state, ~~state-administered local sales tax does not apply regardless of participation in the transaction by a California retailer.~~ As explained in paragraphs (b) and (c), the local use tax may apply if Regulation 1802 provides that the place of sale is not in a county or city having a state-administered local tax. If so, the retailer is required to collect the use tax and pay it to the board.

Gross receipts from sales of tangible personal property subject to the local tax shall include delivery charges, when such charges are subject to the state sales or use tax.

- (2) Exception. State-administered local sales tax does not apply to certain sales of tangible personal property to operators of aircraft to be used or consumed principally outside the county in which the sale is made if such property is to be used or consumed directly and exclusively in the use of the aircraft as common carriers of persons or property under the authority of the laws of the State of California, the United States, or any foreign government. On and after July 1, 1972, for county tax purposes this exemption is limited to 80 percent of the county tax.
- (b) Use tax. State administered local use tax applies if the purchase is made from a retailer on or after the effective date of the local taxing ordinance and the property is purchased for use in a jurisdiction having a state-administered local tax and is actually used there, provided any one of the following conditions exist:
- (1) ~~Title to the property purchased passes to the purchaser at a point outside this state. The retailer's activities in this state do not constitute negotiation of or participation in the purchase transaction under Regulation 1802.~~
 - (2) The place of sale under Regulation 1802 is in this state but not in a jurisdiction having a state-administered local tax;
 - (3) The place of sale is in a jurisdiction having a state-administered local tax and there is an exemption of the sale of the property from the sales tax but there is no exemption of the use of the property from the use tax; or
 - (4) The property is purchased under a valid resale certificate.

State-administered local use tax does not apply to the storing, keeping, retaining, processing, fabricating or manufacturing of tangible personal property for subsequent use solely outside the state or for subsequent use solely in a county not imposing a local use tax.

- (c) Collection of Use Tax by Retailers. Retailers engaged in business in this state and making sales of tangible personal property, the storage, use or consumption of which is subject to state-administered local use tax, are required to collect the tax from the

purchaser. It is immaterial that the retailer might not be engaged in business in the particular county or city in which the purchaser uses the property.

Retailers who are not engaged in business in this state may apply for a Certificate of Registration-Use tax. Holders of such certificates are required to collect tax from purchasers, give receipts therefore, and pay tax to the board in the same manner as retailers engaged in business in this state.

As used in this regulation, the term "Certificate of Registration-Use Tax" shall include Certificate of Authority to Collect Use Tax issued prior to September 11, 1957.

(d) Leases. If a lease is a continuing sale, or a continuing purchase, for the purpose of state tax, it shall be a continuing sale, or a continuing purchase, for the purposes of local tax. If a lease is neither a continuing sale nor a continuing purchase for the purposes of state tax, it shall be neither a continuing sale nor a continuing purchase for the purposes of local tax.



February 20, 2007

Mr. Geoffrey E. Lyle
 Section Supervisor,
 Business Taxes Committee Section
 State Board of Equalization
 450 N St., MIC: 50
 Sacramento, CA 95814

Re: Interested Party Proceeding – Regulation 1803. (Sales negotiated in State and fulfilled by shipment from out of state.)

Dear Mr. Lyle:

This letter responds to the State Board of Equalization's (BOE) Staff's Initial Discussion Paper on the above subject that was issued January 22, 2007. The issue presented concerns whether the legal incidence of the Bradley-Burns sales tax is on the conduct of sales activities in the taxing jurisdiction within the meaning of RTC Sections 7202 and 7205 (and most of the BOE Regulations interpreting those provisions), as contended by many appealing jurisdictions, without regard to where the "sale" might have been completed for California Commercial Code purposes.

This letter summarizes how the State Board of Equalization ("BOE") implemented the Bradley-Burns Sales Tax in 1956 and until 1970-1971 consistently with the appealing cities' argument today. The regulatory revisions carried out in 1970-71 purported to require passage of title in state to occur for the Bradley-Burns Sales Tax to apply, but were adopted without of benefit of any changes in the Bradley-Burns statute. The key points are as follows:

1. 18 Cal. Code Regulations Section 2015 (also known as Ruling 55) provided that the State sales tax could apply to this type of sale. In 1956 it read in pertinent part:

"A. Sales Tax

* * *

"2. Taxable Transactions.

Sales tax applies to sales of property which is:

- (a) Shipped from a point outside this State to the purchaser in this State in a transaction in which
 - (1) **the seller's branch office or other place of business in this State is utilized in any way, as in receiving the**

order or distributing the goods, or * * * [Emphasis supplied.]¹

2. Regulation 2203, Subdivision (a), the predecessor to Regulation 1803 (a) (1), incorporated Regulation 2015 and Ruling 55 by specific cross-reference. This cross-reference remained in Regulation 2203 until it and Regulation 2015 were renumbered and revised in 1970. (See MSLLC Letter 01-02-07, Exhibits 1803-A-F, 1620-C.) Thus Regulation 2203 (a) expressly permitted Bradley-Burns sales tax to apply to the transactions now at issue.
3. Approximately 200 California cities had enacted self-administered sales and use taxes prior to 1955 when the Bradley-Burns statute was adopted. To provide guidance to its member cities, the League of California Cities ("League") had issued a suggested form of ordinance developed by its Tax Committee that applied the city sales tax to the conduct of sales activities only within the taxing jurisdiction. The model ordinance did not require a taxable sale to be completed, either within the city or the State of California. (See Exhibit A, attached.) Presumably, this was because the test of where a sale was completed for California Commercial Code law purposes involved a facts-and-circumstances test based on the parties' intention which would have been impractical for cities to administer. (See, e.g., Diebold v. State Board of Equalization (1959) 168 Cal App2d 628.)
4. The Bradley-Burns statute followed the League's model ordinance in this regard, probably for the same reason. Also, cities that already had self-administered ordinances in place were probably concerned that there be no shrinkage in their tax base as might well occur if a geographic title-passage test was provided in the Bradley-Burns statute to establish the place of sale.
5. These considerations led the League in 1956 to insist that Regulation 2202, the predecessor to Regulation 1802, contain a "conclusive" presumption, based on the language of Sections 7202 and 7205 of the Revenue and Taxation Code ("RTC"),² that the "place of sale" was in the jurisdiction where the taxable sales activities occurred, and the other two principal proponents of Bradley-Burns, the County Supervisors Association of California and the California Retailers Association, concurred. This was the basis upon which Regulation 2202 was initially adopted. (MSLLC Letter 01-02-07, Exhibit 1802-A.)
6. In addition, Regulation 2202, as adopted in 1956 and continuing until 1970, also stated:

¹ A full copy of the 1956 version of Regulation 2015 is attached to MuniServices LLC's ("MSLLC") Interested Party Letter dated January 2, 2007 on this subject as Exhibit 1620-A.

² RTC Section 7202 states that the incidence of the Bradley-Burns sales tax is on the "privilege of selling tangible personal property at retail," and RTC Section 7205 states that "all retail sales are consummated at the place of business of the retailer."

“It is immaterial that title to the tangible personal property sold passes to the purchaser at a place outside of the local taxing jurisdiction in which the retailer’s place of business is located, or that the property sold is never within the local taxing jurisdiction in which the retailer’s place of business is located.”

Thus, as originally implemented by the Board, and until 1970 (See MuniServices LLC (“MSLLC”) Letter 01-02-07, Exhibit 1803-F), there was no geographic title passage test for sales tax in the Bradley-Burns regulation governing “place of sale,” Regulation 2202.

7. RTC Section 6091 places the burden of proof on taxpayers to show that the State sales tax does not apply to taxable transactions. This rule was also in effect in 1956 and was reflected in the Diebold opinion cited earlier and later in Regulation 2028 which was not changed for State sales tax purposes until 1970. (See MSLLC Letter 01-02-07, Exhibits 1628 A-C.) Therefore, for the period, 1956-1970-71, the default rule was that the State sales tax applied unless the taxpayer proved otherwise. Bradley-Burns Sales Tax also applied because of the conclusive presumption reflected in RTC Section 7205 and Regulation 2202.
8. The agreement on applying a conclusive presumption for situs distribution of Bradley-Burns sales tax revenues from this type of transaction was abrogated by the Board in 1970-71 when the principal governing regulations were extensively altered without any supporting legislation. The changes were:
 - (i) Language was added to Regulation 2202 when revised and renumbered as Regulation 1802 (a) (3) to require passage of title “in California” for the Bradley-Burns Sales Tax to apply.
 - (ii) The two cross-references to Regulation 2015 (Ruling 55) in Regulation 2203 (a) that permitted Bradley-Burns sales tax to apply to the type of sale at issue were stricken when it was revised and renumbered as Regulation 1803 in 1970. (MSLLC Letter dated 01-02-07, Exhibit 1803-F.) A sentence including freight charges in gross receipts only when they were so included for State sales tax purposes was added at the same time.
 - (iii) The provision in Regulation 2015 (Ruling 55) permitting State sales tax to apply to the type of sale at issue was stricken from revised and renumbered Regulation 1620, even though it was found valid in Diebold, supra, and earlier by the U. S. Supreme Court in Norton v. Illinois Department of Revenue (1950) 340 U. S. 534. Title passage language was also added to newly revised Regulation 1620, presumably to reflect RTC Section 6051, the State sales tax.
 - (iv) Regulation 2028 was revised to adopt a rebuttable presumption in subdivision (b) (3) (D) that State use taxes apply to sales of this

type, based on a Staff interpretation of Section 2401 of the California Uniform Commercial Code (that had been first enacted some eight years earlier) unless the contract requires delivery by the seller before the sale can be completed. At the same time, however, subdivision (b) (4) was added to Regulation 1628 to recognize that the geographic place of sale rule has no relevance for either the Bradley-Burns Uniform Sales and Use Tax nor for the Transactions and Use Tax Laws.

9. The principal reason that the place of sale was relevant for State sales tax purposes was that the tax did not apply to freight charges if the sale occurs prior to shipment to the purchaser. See former Regulation 2028 (c) (MSLLC Letter dated 01-02-07, Exhibits 1628-A-C³.) The treatment of freight charges has never been difficult for Bradley-Burns purposes, because the second sentence of RTC Section 7205 (a) includes freight charges in taxable Bradley-Burns gross receipts only when they are also taxable for State sales tax purposes, even when the seller is required to make delivery in California by the terms of the contract.⁴ This language reflects that local government was never concerned whether it could tax freight charges. Possibly this was because it could be argued that the taxable event for Bradley-Burns purposes in this type of sale was always conclusively deemed to occur at the taxpayer's place of business in California under the first sentence of RTC Section 7205 (a) before freight charges were incurred on shipment. This rule is also consistent with the rule contained in Regulation 2203 (a) as adopted in 1956 that the Bradley-Burns sales tax applies if the State sales tax does. That interpretation also explains why the League might have been willing to accept the rule stated in Regulation 2203 that the Bradley-Burns Sales Tax would not be applied (i.e., for freight charge purposes) if a taxpayer proved that title passed out of state so that the State sales tax could not apply and to avoid any claim that freight charges should be included in either the state or the local taxable base. Such a provision was the only evidence in the 1956 Bradley-Burns regulations that tied the inclusion of delivery charges to the requirement of RTC Section 7205 that they be treated similarly for both State and local purposes. If not taxable for state purposes, because the sale occurred out of state before delivery, neither should they be taxable under Bradley-Burns.
10. Limiting the interpretation of the fourth sentence of Regulation 2203 as originally adopted to the exclusion of freight charges from Bradley-Burns gross receipts is also supported by the 1970 addition of a specific sentence in

³ This rule is contained in Regulation 1628 (b) (2) in the version of Regulation 1628 first adopted in 1971

⁴ The exact language of RTC Section 7205 (a) is :

"Place of Sale. (a) For the purposes of a sales tax imposed by an ordinance adopted pursuant to this part, all retail sales are consummated at the place of sale of the retailer, unless the tangible personal property sold is delivered by the retailer or his or her agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination.

"The gross receipts from those sales shall include delivery charges, when those charges are subject to the state sales and use tax, regardless of the place to which delivery is made."

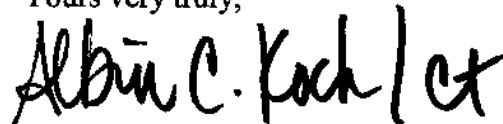
Regulation 1803 providing that delivery charges would be included in the local tax base only when subject to the "state sales or use tax." See MSLLC Letter dated 01-02-07, Exhibit 1803-F.

Without any change in the Bradley-Burns statutes, this regulatory changes made in 1970-71 should not be permitted to shift the Bradley-Burns revenues from these transactions to county pool from situs distribution. There are strong policy reasons why situs allocation is superior to pooling in this context. Matching local revenues with the infrastructure and service (security, police and fire) costs associated with the location of a physical place of business in the Appealing Cities stimulates business activities and the creation of jobs. Moreover, requiring taxpayers to allocate to only a few rather than 58 jurisdictions in reporting their local taxes reduces record-keeping needs and compliance burdens. Such a rule will also simplify the complex and time-consuming audit and compliance investigation now required to determine whether a taxpayer has properly reported the local tax on such sales.

Accordingly, MSLLC requests that Board Staff propose amendments to clarify the Bradley-Burns regulations to reflect the original and continuing language of RTC Sections 7202 and 7205 in accordance with how they were originally interpreted and applied by the Board Members between 1956 and 1970. As suggested at the Interested Party Meeting held February 8, 2007, MSLLC's proposed draft of the necessary clarifications is attached to this letter as Exhibit B. You will note that it also calls for an amendment to Regulation 1802 (a) (3) to remove the requirement that "title" must pass in the State of California for the Bradley-Burns sales tax to apply. That requirement was not included in Regulation 2202 when it was first adopted in 1956 and did not appear in it until 1970.

Finally, we were dismayed to learn at the February 8, 2007 Interested Party meeting that Board Staff had made no progress in quantifying accurately the impact on local jurisdictions of the proposed clarifications. At a meeting with representatives of the Appeals Division and the Allocation Group a year ago, MSLLC was informed that such an effort was in process and would be carried out to the extent data was available on-line or archived. MSLLC representatives agreed at that time to aid in supplying any necessary data to the best of its ability, and is still committed to doing so today. Please let us know how we may assist in this important effort.

Yours very truly,

A handwritten signature in black ink that reads "Albin C. Koch" followed by a stylized flourish or initials.

Albin C. Koch
Special Tax Counsel
MuniServices LLC

cc: All Board Members and Staff
Randy Dryden
Janis Varney
Fran Mancia

Enclosures

- Exhibit A. Pre-Bradley-Burns Model City Sales Tax Ordinance drafted by the League of California Cities.
- Exhibit B Suggested clarifying amendments to Regulation subdivisions 1802 (a) (3) and 1803 (a) and (b)

Hotel Claremont
Berkeley, California

26 May 1948

EXHIBIT

A

To: HONORABLE MAYOR AND CITY COUNCIL

Subject: LEAGUE'S 1946 SUGGESTED SALES TAX ORDINANCE AS REVISED BY UNIFORM SALES TAX COMMITTEE.

The League's Uniform Sales Tax Committee, appointed shortly after the last Annual Conference, has concluded its work and its recommendations to the League Board of Directors were approved at the Board meeting in Berkeley, April 23, 1948.

The preliminary revision of the ordinance was mimeographed and distributed last January to many state-wide retail organizations and interested retailers. There was universal objection to the proposal to change the definition of the word "sale" as contained in the California Retail Sales and Use Tax Act. While there was objection to some of the other features of the revised ordinance, most of the objections were to the proposed redefinition of "sale".

After considering the suggestions and comments of hundreds of retailers, it was evident that the original uniform ordinance was, in the main, being administered with an amazing degree of success.

Therefore, it seems clear at this time that there are no real complaints against sales tax ordinances insofar as uniformity of provisions, administration or interpretation are concerned. This information could not have been obtained except by the work of the Uniform Sales Tax Committee.

Final recommendations of the Sales Tax Committee, as approved by the League Directors, are that specific exemptions be included to exempt (1) sales to public agencies, (2) sales of property consumed in public construction, (3) sales made prior to the effective date of the ordinance, and (4) sales of food sold on trains. Nor is any tax due under the recommended ordinance where a tax already has been paid to another city. Although the great majority of cities now having a sales tax exempt sales for delivery outside the city where title passes outside of the city, this exemption was not included because the committee believed that each city considering the adoption of a sales tax ordinance should determine for itself the advisability of including an exemption expressly or by interpretation. Unless the definition of "sale" is changed by the sales tax ordinance, sales for delivery outside where title passes outside are probably exempt as a matter of law.

The recommendations of the committee include also a section providing for the collection of the sales tax from outside retailers by authorizing the tax collector to use a formula in computing the amount of sales tax due. Another recommendation of the committee designated to facilitate administration of the sales tax ordinance is the inclusion of a provision permitting waiver or compromise of any penalties or interest due under the ordinance.

A copy of the revised recommended ordinance is attached. Any substantial departure from the 1946 ordinance has been explained in footnotes to the revised ordinance. Sample forms used by other cities have been reproduced and follow the ordinance. At the end of this letter is a list of points and authorities for city attorneys.

The League gratefully acknowledges the fine work of the Uniform Sales Tax Committee and the special drafting assistance of Lester Lev, deputy city attorney, Los Angeles, and John Lauten, assistant city attorney, Glendale. The committee members were: Norris Montgomery, mayor, Santa Barbara, chairman; T. A. Brooks, chief administrative officer, San Francisco; Christopher Griffin, city attorney, Huntington Park; John Lauten, assistant city attorney, Glendale; Lester Lev, deputy city attorney, Los Angeles, vice chairman; Robert C. Lindsay, city treasurer,

San Diego; Ross Miller, city manager, Berkeley; Walter C. Peterson, city clerk, Los Angeles; Lawrence Hoeny, assistant city attorney, Oakland; J. Kelly Steele, city attorney, Bakersfield; T. A. Swarthout, city clerk, San Fernando; and C. C. Wood, finance officer and purchasing agent, San Bernardino.

Richard Carpenter

Legal Counsel

The following is a list of cities which have enacted sales tax ordinances. The list is not intended to be exhaustive, but it is believed that it covers the majority of cities which have enacted such ordinances.

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FOURTH AND FIFTH

We believe that the following points and authorities will be helpful to city attorneys responsible for enacting the provisions of a sales tax ordinance and for the day-to-day interpretation of the sales tax ordinance. We suggest that the city attorney or city clerk write to the State Board of Equalization, Sacramento, for a copy of the California Sales and Use Tax Law (1947) as prepared and published under their direction. This document contains an analysis of the law, and each section of the code has been annotated. It also will be necessary for each city to have copies of the Rules and Regulations of the State Board of Equalization. This document (California Administrative Code, Title 18, Public Revenues, Sales and Use Tax) may be purchased for 75¢, plus sales tax, from the State Printer, Printing Division, Document Section, 11th and "O" Streets, Sacramento 14, California.

1. Charter cities may enact a sales tax ordinance provided there is no limitation in the charter on such authority. West Coast Advertising Company v. City and County of San Francisco, 14 Cal.(2d) 516.

2. General law cities may enact a sales tax ordinance inasmuch as the tax in this state has been construed by the courts to be a license tax on the retailer and not upon the consumer. See Section 862.12 Deering's General Laws, Act 5233, and People v. Herberts of Los Angeles, 3 Cal.App.(2d) 482; Graham Bros. v. City of Los Angeles, 6 Cal.App.(2d) 203; Meyer Construction Co. v. Corbett, 7 Fed.Sup. 616; Hunt v. City of Riverside, 31 AC 677 (April 2, 1948); 47 Am.Jur. 193-260, at page 195; and 128 ALR 893.

3. The adoption of a sales tax ordinance where a city already has a business license tax does not constitute double taxation. Ingels v. Riley, 5 Cal.(2d) 154, 164; Flynn v. San Francisco, 18 Cal.(2d) 210; and Bardon v. Nudelman, 15 N.E.(2d) 836.

4. What is a property tax as distinguished from excise, license and other taxes. 103 ALR 18.

5. What amounts to a sale at retail within tax statutes and ordinances. 139 ALR 372.

6. California Sales and Use Tax Law (1947), State Board of Equalization, Sacramento.

SALES TAX ORDINANCE

AN ORDINANCE OF THE CITY OF _____ IMPOSING A LICENSE TAX FOR THE PRIVILEGE OF SELLING TANGIBLE PERSONAL PROPERTY AT RETAIL, PROVIDING FOR PERMITS TO RETAILERS, PROVIDING FOR THE COLLECTING AND PAYING OF SUCH TAX, AND PRESCRIBING PENALTIES FOR VIOLATIONS OF THE PROVISIONS HEREOF.

Section 1. IMPOSITION AND RATE OF TAX. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 2% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City of _____ on or after _____. The license tax imposed by the provisions of this ordinance is in addition to any and all other taxes imposed by any other ordinance of the City of _____.

Section 2. TAX LEVIED IN SAME MANNER AS STATE TAX. The tax hereby levied, except as otherwise herein provided, is levied in the same manner, to the same extent and under the same conditions as sales taxes are levied pursuant to Part 1 of Division 2 of the California Revenue and Taxation Code, known as the "Sales and Use Tax Law," as amended and in force and effect on _____.

Section 3. ADOPTION OF STATE SALES TAX LAW BY REFERENCE; EXCEPTIONS. All of the provisions of the "Sales and Use Tax Law," as amended and in force and effect on _____ except the provisions thereof pertaining solely to the "Use Tax" and Sections 6051, 6052, 6053, 6066, 6067, 6068, 6069, 6070, 6071, 6451, 7052, 7056, 7101, 7102, 7151, 7152, 7153, applicable to sales of property at retail, are hereby adopted and made a part of this ordinance as though fully set forth herein, and all provisions of any other ordinance in conflict therewith are inapplicable to this ordinance and the tax hereby imposed; provided, however, the term "gross receipts," as used herein, does not include the amount of any tax imposed by the State of California upon or with respect to retail sales whether imposed upon the retailer or upon the consumer.

All of the provisions of the "Sales and Use Tax Law" hereby adopted, providing for the adoption of rules and regulations and for hearings on the part of the State Board of Equalization, shall be performed by the City Council of the City of _____. All other provisions of the "Sales and Use Tax Law" hereby adopted, providing for the performance of official action on the part of the State Board of Equalization, shall be performed by the City _____ (tax collector, clerk, etc.).

The City of _____ shall be deemed substituted for the State of California whenever the State is referred to in said "Sales and Use Tax Law."

The City Attorney of _____ shall be deemed substituted for the Attorney General whenever the Attorney General is referred to in said "Sales and Use Tax Law."

1. Insert amount of tax.
2. Insert a date subsequent to the effective date of the ordinance. The effective date of the ordinance and this date may be the same.
3. Insert a date which coincides exactly with the effective date of the ordinance.
4. Insert a date which coincides exactly with the effective date of the ordinance so that the latest amended version of the State Sales and Use Tax Act will be adopted by reference.

The City (auditor, controller) shall be deemed substituted for the State Controller whenever the State Controller or State Board of Control are referred to in said "Sales and Use Tax Law."
The County of [] shall be deemed substituted for the County of Sacramento whenever the County of Sacramento is referred to in said "Sales and Use Tax Law."

Section 4. EXEMPTIONS. (a) In addition to those exemptions contained in Part 1 of Division 2 of the Revenue and Taxation Code of the State of California, included in this ordinance by reference, there shall be excluded from the computation of the tax, gross receipts from:

(i) Sales made to or by the State of California or any agency, department, political subdivision, district, or municipal corporation thereof;

(ii) Sales of property to be consumed in, or incorporated into, the erection, construction, repair or alteration of either public works or buildings belonging to or being constructed by or on behalf of, or for the use of the United States Government, the State of California or any agency, department, political subdivision, district or public or municipal corporation of the State;

(iii) Sales made pursuant to contracts actually executed in good faith prior to the effective date of this ordinance;

(iv) Sales of meals, food and drinks sold or served on common carriers operating into, through or out of the city from or to points outside this city.

(b) No tax shall be due hereunder if a sales tax, purchase tax, use tax, or purchase and use tax imposed by any other city of the State of California has been paid on the same transaction.

Section 5. ADOPTION OF RULES AND REGULATIONS BY REFERENCE. INTERPRETATIONS. The rules and regulations of the State Board of Equalization as amended and in force and effect pertaining to the interpretation, administration and enforcement of the "Sales and Use Tax Law," insofar as applicable, except Rule No. 55 (Section 2015, Title 18, California Administrative Code, Sales & Use Tax) shall apply in the interpretation of this ordinance until specifically abandoned by the rules and regulations adopted by the City Council of [] pursuant to [].

5 Insert name of county in which city is located.

6 Exemptions included above are uniform exemptions found in practically all sales tax ordinances, and they have been recommended by the League's Uniform Sales Tax Committee. There were no exemptions in the League's 1946 suggested sales tax ordinance. Other exemptions may, of course, be included if the city council so determines. There is an additional exemption included in a great majority of city sales tax ordinances with respect to sales for delivery outside the city.

The exemption below actually is an explanation or interpretation of the ordinance required by the definition of "sale" in the State statutes, but a majority of the cities have deemed it necessary to include such language rather than to leave the matter to administrative interpretation:

"(c) The sales tax does not apply to sales of property which is shipped to a point outside of this city, pursuant to the contract of sale, by delivery by the retailer to such point by means of (1) facilities operated by the retailer, (2) delivery by the retailer to a carrier for shipment to a consignee at such point, or (3) delivery by the retailer to a customs broker or forwarding agent for shipment outside this city."

7 See Footnote 4.

to this Ordinance. The words "City" shall be deemed substituted for the word "State" whenever the word "State" appears in said rules and regulations.

In lieu of Rule No. 55, specifically excepted above, the following interpretations shall apply in the administration of this ordinance:

(A) The sales tax does not apply to sales of property which is:

(i) Imported into this city from a foreign country and sold by the importer in the original package in which imported.

(ii) Sold to foreign purchasers for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property abroad and actually carried to a foreign destination, title and control of the property passing to the foreign purchaser upon delivery, and no portion of the property being used or consumed in the United States. Copies of U.S. Customs Shippers' export declarations filed with the Collector of Customs must be obtained and retained by retailers to support deductions taken under this paragraph. The tax applies to the transaction if the property is diverted in transit or for any reason not actually delivered outside the City pursuant to the contract of sale or not shipped abroad by a foreign purchaser, regardless of documentary evidence held by the retailer of delivery of the property to a carrier for shipment outside the City, or to a foreign purchaser for shipment abroad.

(iii) Mailed by the seller, pursuant to the contract of sale, to persons in the armed forces at points outside continental United States, notwithstanding the property is addressed in care of the Postmaster and forwarded by him to the addressee. When mail is addressed to Army Post Offices (A/P/O's) in care of the Postmaster or to naval forces addressed in care of the Postmaster, it will be presumed that it is forwarded outside California. The seller must keep records showing the names and addresses as they appear on the mailed matter and should keep evidence that the mailing was done by him.

(iv) Shipped to a point outside this City pursuant to the contract of sale when the property is marked for export and delivered by the retailer to the "contracting officer," "officer in charge," "Port Quartermaster," or other officer of the United States for transportation and delivery to the purchaser at such a point.

(B) The sales tax does not apply to sales of airplanes, and parts and equipment for airplanes, transported to a point outside this City pursuant to the contract of sale when such property is delivered to the United States Army Corps or any other agency or instrumentality of the United States for transportation and delivery to the purchaser or someone designated by him at that point.

(C) The sales tax does not apply (either in interstate or intrastate commerce) to sales of property shipped from a point outside the City of _____ to a purchaser inside the City of _____, or to the

8 In rewriting Rule No. 55 of the State Board of Equalization (Section 2015, Title 18, California Administrative Code, Sales and Use Tax) it seems desirable to include the rewrite as a part of the ordinance even though it is simply an interpretation of the provisions of the ordinance and the Retail Sales Tax Act adopted by reference. It is not necessary for cities already having a sales tax to include such provisions in their ordinances provided the city sales tax ordinance adopts the State Board of Equalization Rules and Regulations by reference, and specific rules have been adopted covering sales for delivery into the city.

retailer, agent, or the City of _____, for delivery to the purchaser, or if none of the elements of sale, other than such delivery, takes place in the City of _____.

The sales tax does apply (either interstate or intrastate commerce) to sales of property shipped from a point outside of the City of _____ to a purchaser inside the City of _____, or to the retailer's agent in the City of _____, for delivery to the purchaser where any element of the sale, in addition to such delivery, takes place in the City of _____.

"Element of Sale" is hereby defined to include solicitation of an order, the acceptance of an order, the giving of an order, whether such order is given in person, by telephone or by mail, or the payment of the purchase price.

Section 6: VERBATIM EXCERPTS SHALL NOT EXCLUDE BALANCE. The inclusion of any clause, portion or part of the "State Sales and Use Tax Law," Part 1, Division 2, of the Revenue and Taxation Code of the State of California, or the rules and regulations of the State Board of Equalization, verbatim in this ordinance shall not in or of itself be deemed to exclude any of the remaining provisions of said "Sales and Use Tax Law" or rules and regulations that are made a part hereof by reference only.

Section 7: APPLICATION FOR PERMIT. Every person desiring to engage in or conduct business as a seller within the City of _____ shall file with the City _____ (tax collector, etc.) an application for a permit for each place of business from which taxable sales will be made. Every application for a permit shall be made upon a form prescribed by the City _____ (tax collector, etc.) and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the City _____ (tax collector, etc.) may require. The application shall be signed by the owner, if a natural person; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

9. The Uniform Sales Tax Committee recommended in connection with applying the tax to sales for delivery into the city that the language below be included in order to facilitate collection of the tax from outside retailers where the retailer was delivering into a number of sales tax cities. This suggested formula section has been prepared by John H. Lauten, Assistant City Attorney of Glendale, who has done more than any other person to attempt to solve this vexing inter-city problem.

"SECTION _____: FORMULA COMPUTATION OF SALES AND USE TAX BY RETAILERS LOCATED OUTSIDE CITY.

"The City _____ (tax collector, clerk, etc.) may approve the payment of the sales tax by retailers located outside the city in accordance with a formula if he finds that the formula will produce the same or approximately the same tax as if detailed accounting procedures had been followed. A retailer desiring to use such a formula shall furnish such information as may be required by the City _____ (tax collector, clerk, etc.) to enable him to make the required finding. The formula may be used by the retailer for such period of time, not to exceed one year, as may be authorized by the City _____ (tax collector, clerk, etc.) in writing, and is subject to renewal, upon application, for periods not to exceed one year.

"Payment in full of sales taxes in accordance with an approved formula shall constitute full satisfaction of the retailer's sales tax liability."

- 5 -

Section 8. ISSUANCE AND DISPLAY OF PERMIT. After compliance with Section 2 of this ordinance by the applicant, the City (tax collector, etc.) shall grant and issue to each applicant a separate permit for each place of business from which taxable sales will be made. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein; provided, however, a change of location may be endorsed upon the permit by the City (tax collector, etc.). The permit shall at all times be conspicuously displayed at the place for which issued.

Section 9. PERMIT FEES. At the time of making an application for a permit, and at the time a change of location is endorsed upon a permit, the applicant for a permit or for an endorsement of a change of location on a permit shall pay to the City (tax collector, etc.) a fee of _____.

Section 10. REVOCAION OF PERMIT. Whenever any person fails to comply with any of the provisions of this ordinance or any rule or regulation adopted pursuant hereto, the City Council of the City of _____, upon hearing, after giving the person ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The notice may be served personally or by mail in the manner prescribed for the service of notice of a deficiency determination under the "Sales and Use Tax Law." The City (tax collector, etc.) shall not issue a new permit after the revocation of a permit unless the City Council of the City of _____ is satisfied that the former holder of a permit will comply with the provisions of this ordinance and the rules and regulations adopted pursuant hereto and directs the City (tax collector, etc.) to issue such permit.

Section 11. RENEWAL OF PERMIT. A seller whose permit has been previously suspended or revoked shall pay the City (tax collector, etc.) a fee of _____ for the renewal or issuance of a permit.

Section 12. UNLAWFUL ACTS. A person who engages in business as a seller in the City of _____ without a permit or permits, or after a permit has been suspended or revoked and before the renewal or issuance of a permit, and each officer of any corporation which so engages in business, is guilty of a misdemeanor.

Section 13. DUE DATE. The taxes imposed by this ordinance are due and payable to the City of _____ (tax collector, etc.) on or before the last day of the month next succeeding each quarterly period, the first quarterly payment to be due and payable under this ordinance on the _____ day of _____. The _____ (tax collector, etc.) may require returns and payment of the amount of taxes for quarterly periods

10 It is the recommendation of the League's Uniform Sales Tax Committee that the inclusion of a permit fee in such instances and the amount thereof be left entirely to the discretion of each city. The city officials of a number of cities with business license ordinances believe that no additional permit fee should be charged. On the other hand, the administrative officials of other communities believe that unless some value is attached to the permit, much greater difficulty will be experienced by the city in the enforcement of the ordinance and in the care taken by the retailer to preserve the permit.

11 The State law has been amended to provide for payment on the "last" day rather than the 15th day and cities already having a sales tax ordinance should amend such ordinances to conform thereto so that retailers will make all payments at the same time.

12 Insert the date the first quarterly payment is desired by the city council.

other than calendar quarters depending upon the principal place of or the nature of the business of the seller or retailer or may require returns and payment of the amount of taxes for other than quarterly periods.

Section 14. REIMBURSEMENT. The tax hereby imposed shall be collected by the retailer from the consumer insofar as it can be done.

Section 15. UNLAWFUL ADVERTISING. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that, if added, it or any part thereof will be refunded. Any person violating any provision of this section is guilty of a misdemeanor.

Section 16. SUIT FOR TAX. All taxes hereby levied shall be payable to the City (tax collector, etc.) and any civil suit for the collection thereof may be filed in any court of competent jurisdiction in the State of California, and the City Attorney of said City shall prosecute the action.

Section 17. RESALE CERTIFICATE. The City (tax collector, etc.) may at his option accept a State of California Resale Certificate as evidence that any sale is not a sale at retail, or he may in his discretion require an affidavit from the seller setting forth such information respecting such sale as he deems necessary to determine the nature of such sale.

Section 18. EXTENSION OF TIME. WAIVER OR COMPROMISE. The (tax collector, etc.) shall have power, for good cause shown, to extend for a period of not to exceed 30 days the time for making any return or paying any amount required to be paid under this ordinance, when requested so to do in writing, before the same becomes delinquent. The (tax collector, etc.) may, with the written approval of the city attorney, waive or compromise any penalty or interest that would otherwise accrue under the provisions of this ordinance. The (tax collector, etc.) shall make and transmit to the City Council quarterly, a detailed report of any sums so waived or compromised with the reasons therefor.¹³

Section 19. DISPOSITION OF PROCEEDS. All monies collected under and pursuant to the provisions of this ordinance shall be deposited and paid into the General Fund of the City of _____.

Section 20. DIVULGING OF INFORMATION FORBIDDEN. It is unlawful for any officer or employee of the City of _____ having an administrative duty under this ordinance to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. However, the City Council may, by resolution, authorize examination of the returns by Federal or State officers or employees or by the tax officers of this or any other city if a reciprocal arrangement exists. Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

¹³ Section 18 has been added upon recommendation of the Sales Tax Committee, and it is suggested that a similar section be included in those city sales tax ordinances already adopted.

Section 21. PENALTIES. Any person required to make, render, sign or verify any report under the provisions of this ordinance, who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due and required to be paid hereunder, is guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than \$500.00 or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

Section 22. SAME. Any person, firm or corporation violating any of the terms of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than \$500.00 or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

Section 23. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Council of this City hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

Section 24. EFFECTIVE DATE. This ordinance, inasmuch as it provides for a tax levy for the usual current expenses of the city, shall, under the provisions of Section 21 of Article IV of the Constitution, and under the provisions of Section 861(d) of the Municipal Corporations Act (Statutes 1883, page 93), take effect immediately.¹⁴

¹⁴ This section as written is applicable only to general law cities. City Attorneys of charter cities should examine the provisions of their own city's charter and the Riverside case before including a similar effective date section. See Hunt v. City of Riverside, Supreme Court, April 2, 1948, 31 AC 677.

Richard Carpenter, Legal Counsel
League of California Cities
Hotel Claremont Building
Berkeley, California

FORMS

The following forms are those used by the cities of Glendale and Huntington Park. They afford a sufficient sample upon which you may draw for the preparation of your own forms. While additional forms may be used in the administration of the sales tax ordinance, they may be prepared from time to time as they become necessary. Upon adoption of a sales tax ordinance, the official responsible for its administration or for the collection of the tax should advise all merchants doing business in the community of the existence of the ordinance, its effective date, the tax imposed, the time and place where payment is to be made, delinquent dates, etc. Such official should include with such form letter a copy of the ordinance and an application form.

In the large cities where the number of accounts will warrant the use of I.B.M. equipment, it is suggested that the municipal officer responsible for the administration of the sales tax obtain copies of the forms used by the cities of Los Angeles, San Diego or Berkeley. In any city, copies of the State's Sales and Use Tax forms will be helpful in the preparation of forms to be used by such city. State forms may be obtained from the State Board of Equalization, Sacramento.

I. APPLICATION FOR PERMIT

THIS APPLICATION FOR PERMIT TO ENGAGE IN BUSINESS AS A SELLER OF TANGIBLE PERSONAL PROPERTY AND REGISTRATION AS A RETAILER OF TANGIBLE PERSONAL PROPERTY, PURSUANT TO ORDINANCES NOS. 2107 AND 2162, IS NOT TRANSFERABLE TO ANY OTHER PERSON OR PLACE.

THIS APPLICATION MUST BE ACCOMPANIED BY A FEE OF \$1.00.

1. OWNER State
 2. (Doing Business As) Enter Fictitious Name, if any
 3. LOCATION of Business Phone
 City Zone
 4. MAILING ADDRESS, if different from line 3
 5. HOME ADDRESS Phone
 6. TYPE OF ORGANIZATION: ☒ Individual ☐ Copartnership ☐ Corporation
 7. NAMES OF PRINCIPAL OFFICERS, OR PARTNERS
 8. KIND OF BUSINESS
 9. OTHER PLACES OF BUSINESS. How Many?
 10. When did you purchase or open your business? (Date)
 11. Have you had a previous Glendale Sales Tax Permit? Number
 12. NAME OF PARTY FROM WHOM YOU ARE BUYING THE BUSINESS
 13. DATE Legal Signature
 Under the Law Applicant is Liable for Owner, Partner or Officer
 Any Unpaid Sales Tax. Legal Signature
 Return original copy to City Clerk,
 City Hall, Glendale, 5, California
 Retain duplicate copy for your files.

ORIGINAL COPY (Note: There is duplicate copy)

II. SALES TAX PERMIT

ORIGINAL SALES TAX PERMIT IS NOT TRANSFERABLE TO ANY OTHER PERSON OR PLACE. IT IS NOT TRANSFERABLE TO ANY OTHER PERSON OR PLACE.

THE PERSON, FIRM OR CORPORATION INDICATED BELOW IS HEREBY AUTHORIZED, PURSUANT TO ORDINANCE 1099, CITY OF HUNTINGTON PARK, TO ENGAGE IN SALES TAX THE BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AT THE ADDRESS HEREIN INDICATED.

ISSUED TO:

III. SALES TAX RETURN (Cont'd.)

C - Reverse side of D)
DUPLICATE

KEEP THIS COPY
FOR YOUR RECORD

(This form is identical to (A) except in place of the word "ORIGINAL" is the word "DUPLICATE" and in place of the words "CITY HALL" are the words "KEEP THIS COPY FOR YOUR RECORD" on the duplicate.

D - Reverse side of C, Duplicate)

EXEMPTIONS ALLOWABLE:

(List exemptions)

IV. RECEIPT FOR PAYMENT OF SALES TAX

No. 10001

CITY OF GLENDALE

RECEIPT FOR PAYMENT OF SALES TAX

Received from: _____ Date: _____

Period of _____, 19____ Tax \$ _____

G. E. CHAPMAN, City Clerk

Penalty \$ _____

Interest \$ _____

Total \$ _____

QUARTERLY SALES TAX RETURN
to the
CITY OF HUNTINGTON PARK

A) ORIGINAL
City Hall

IOgan 5-6161
Y005 Sta. 12
HUNTINGTON PARK

Period Ending Month Day Year Remittance Enclosed by Check Cashier's Money Check Order Order

1. Amount of Huntington Park Taxable Sales Reported to State of Calif. \$.....
2. Less: Exemptions Allowed by City of Huntington Park*. \$.....
3. Net Amount Taxable by City of Huntington Park (Item 1 Less Item 2). \$.....
4. Tax Due City of Huntington Park. (one-half of one percent of item 3)
($\frac{1}{2}$ of 1%) \$.....

Do you sell alcoholic beverages? Please check On sale ☐
Off sale ☐
None ☐

City Permit No. I declare under penalty of making a false statement, that, to the best of my knowledge and belief, the statements made herein are correct and true.

Signed: Title
If other than Proprietor

Note: Avoid penalty by forwarding tax within 30 days after period for which tax is due. * See over

B - Reverse side of A)
THIS FORM IS YOUR HUNTINGTON PARK CITY SALES TAX RETURN
You are required to make this return and pay the tax, pursuant to Ordinance 1099, City of Huntington Park.

1. This Form is to be filed with the Huntington Park License Collector, City Hall.
2. Reverse side hereof must be filled in and signed. Mail with payment in time to avoid penalties.
3. Show your permit No. on reverse side of check or money order. Make all checks payable to City of Huntington Park License Dept.
4. Refer to Permit Number in any correspondence.
5. Allowable sales exemptions are shown on duplicate form enclosed for your files.

Robert E. Cendejas
Attorney at Law
1725 North Juliet Court
Brea, CA 92821

Telephone (714) 256-9595
Mobile Telephone (213) 361-0642

Facsimile (928) 396-1292
E-mail: Robertecendejas@AOL.com

VIA FACSIMILE: (916) 322-4530

VIA E-MAIL: Lynda.cardwell@boe.ca.gov

February 20, 2007

Mr. Jeffrey L. McGuire, Chief
Tax Policy Division (MIC: 92)
Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279-0092

**RE: BTC- Reg. 1803
Support Clarification**

Dear Mr. McGuire:

On behalf of the City of Ontario, I am submitting this letter in support of clarifying amendments to Regulation 1803 that sales negotiated in California and fulfilled by shipment from out of state are subject to the local sales tax. These amendments would clarify the original and intended meaning of the Bradley-Burns sales tax law, and as such, should have retroactive effect

My review of the enabling city ordinances, local sales and use tax statutes and regulations from their inception to the present, case law and other historical writings, make it clear that there is no requirement that the property be physically located either in the taxing jurisdiction or in California when the sales process is completed, in order for the local sales tax to apply.

Further, application of these sales as local sales tax transactions would simplify and ease both the taxpayer's and the Board's compliance and administrative burdens. It is much easier for the taxpayer to allocate its local tax to the location(s) of its California sales office(s). This also matches the tax revenue with the business location utilizing valuable city resources such as police and fire protection.

Allocation of these sales as use tax transactions places an undue burden on taxpayers. In order to properly allocate the tax as a use tax, the taxpayer must first determine if the property will be delivered from a California warehouse or from an out-of-state

warehouse. If it is a California warehouse, then there is no controversy; the tax is allocated to the California sales office.

However, if the property is delivered from the out-of-state warehouse the taxpayer must track the sales to their destination. This is not normally the way the taxpayer's accounting records are set up. Having done that, the taxpayer must then determine in which county each of the sales belongs, in order to allocate the tax to the 58 countywide pools. This is that much more burdensome for a company headquartered out of state. This all becomes even more complex when a sales order is for goods that will be partly delivered from a California warehouse and partly delivered from an out of state warehouse.

Further, having to determine whether it is the local sales tax or whether it is the local use tax that applies to sales orders received at the California sales office, is burdensome and serves no worthwhile purpose. The Board, cities and businesses have for many years supported situs allocation of the local tax. In this case, the local tax statutes, regulations and court decisions present a clear basis for determining the applicable tax to be a sales tax, which is allocated to the California place of business. This is both the practical and fair way to allocate the tax.

Respectfully submitted,

Robert E. Cendejas

Robert E. Cendejas

cc: Grant Yee, Ontario



February 20, 2007

Jeffrey L. McGuire, Chief
Tax Policy Division (MIC: 92)
State Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA. 94279-0092

RE: Proposed Changes to Regulation 1803

Dear Mr. McGuire:

The California Retailers Association must oppose the proposed changes to Regulation 1803, regarding the application of the local sales and use tax.

Under existing rules in California, if a product is shipped from an out-of-state location to an address in California, the retailer collects the tax at the rate in effect at the recipient's location. This is true even if the sale is "negotiated" at an in-state location. This is consistent with the way virtually every other state in the country taxes this type of transaction.

Under the proposed change to Reg. 1803, retailers would be required to collect the tax at the rate in effect "where the sale was negotiated." This would be very problematic for several reasons.

First, it is not always clear where a particular sale is "negotiated." There are many variables that can come into play to make this determination. It would be virtually impossible for retailers to program their computers/POS systems in a way to properly capture this information to determine which local tax to apply. Forcing sales associates to manually make determinations and tax calculations on every "send" sale is simply a non-starter--it will lead to numerous instances where the incorrect rate of tax is collected.

Secondly, it would force multistate retailers to create one procedure when merchandise is shipped to California, and a different procedure when merchandise is shipped to any other state. This is obviously expensive and burdensome to retailers, and will not produce any additional revenue for the state and local governments in California. It will only result in a redistribution of local sales tax revenues.

February 20, 2007
Jeffrey L. McGuire
Page 2

Maintaining a system whereby a retailer collects the local tax based on the "ship to" address of the merchandise is the best approach. It provides certainty (i.e., the address where the merchandise is sent is clear, whereas the location where the sale was "negotiated" is not necessarily known), and is much easier for retailers to collect the proper tax (the tax can be calculated using an automated system and this practice is consistent with that of other states). For all the aforementioned reasons, the California Retailers Association opposes the proposed changes to Regulation 1803.

The California Retailers Association is a trade association representing major California department stores, mass merchandisers, supermarkets, chain drug and convenience stores, as well as specialty retailers such as auto, book and home improvement stores. Our members have more than 9,000 stores in California and account for more than \$100 billion in sales annually.

Sincerely,

Heidi Barsuglia
Director, Government Affairs

cc: Honorable Betty Yee, Chairwoman, First District (MIC 71)
Honorable Bill Leonard, Vice-Chair, Second District (MIC 78)
Honorable Michelle Steel, Member, Third District
Honorable Judy Chu, Ph.D., Member, Fourth District
Honorable John Chiang, State Controller, C/O Ms. Marcy Jo Mandel (MIC 73)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Khabbaz (MIC 50)
Ms. Lynda Cardwell (MIC 50)

February 20, 2006



1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500
Facsimile
916.441.5507

The Honorable Betty Yee, Chair
The Honorable Judy Chu, Vice Chair
The Honorable Michelle Steel, Member
The Honorable Bill Leonard, Member
The Honorable John Chiang, State Controller and Member
State Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279

Re: Reallocation of Use Tax Revenues

Dear Chair and Board Members:

On behalf of the California State Association of Counties (CSAC), I respectfully submit our opposition to the proposed changes covered in the *Initial Discussion Paper* on Regulation 1803 and the *Initial Discussion Paper* on Regulation 1802.

Counties believe there is no compelling reason to abandon the current, long-standing use tax allocation method, especially when one considers the number of jurisdictions the change would negatively affect and the way certain jurisdictions have begun kicking use tax revenues directly back to favored actors in the private sector.

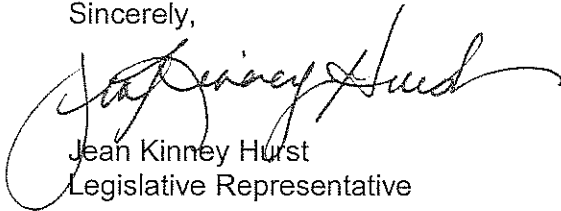
These proposals would further increase the recent practice of local jurisdictions trading away enormous portions of sales tax, which is intended to provide public services and facilities, in exchange for companies consolidating their region- or state-wide purchasing activities in that jurisdiction. The purported reason for allocating taxes on a *situs* basis, according to proponents of this proposal, is to "match local revenues with the infrastructure and service...costs associated with the location of a physical place of business" (IDP Discussion of Regulation 1803, page 8). This ignores, first of all, the fact that the infrastructure and services provided to any given location come from a variety of jurisdictions, and, secondly, that up to two-thirds of the sales tax generated is kicked directly back to the taxed entity, money that regular citizens and other businesses would likely assume is helping provide important infrastructure and services to the region. Companies who incur large sales taxes are most likely to set up such a scheme, effectively shifting the tax burden to smaller actors. Most importantly, under these new schemes, which are well-documented in a recent report from the Legislative Analyst's Office, the "physical place of business" is often just an office through which purchasing paperwork is funneled, while the actual places of business and use are scattered throughout the region and the state, so encouraging such schemes actually takes revenue away from the jurisdictions responsible for supporting places of business, creating a detriment to the entire region. Under these proposals, the great portion of public agencies and private persons would be measurably worse off, and their approval would be seen as tacit endorsement of the practice by the Board of Equalization.

Finally, we feel it is essential to have the opportunity to review and comment on updated data showing the amount of money reallocated and the number of jurisdictions affected by these proposals before any final deliberations or decisions.

These proposals taken together would be a shift in long-standing tax policy that there is

no compelling reason to change. Its effects would be quite broad (especially if applied retroactively), would negatively affect the great majority of Californians, and would further incentivize detrimental local policy decisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jean Kinney Hurst", written in a cursive style. The signature is positioned above the printed name and title.

Jean Kinney Hurst
Legislative Representative

cc: Jeffrey L. McGuire, Tax Policy Division (MIC 92)

**SCHEDULE B - DETAILED ALLOCATION BY COUNTY OF 1% COMBINED STATE AND
UNIFORM LOCAL SALES AND USE TAX**

DUE ON OR BEFORE	
[FOID]	YOUR ACCOUNT NO.

PLEASE READ INSTRUCTIONS ON BACK
BEFORE PREPARING THIS SCHEDULE

Combined state and uniform local sales and use tax on retail sales of merchandise (not involving installation) made at your permanent place of business in California or combined state and local tax on property purchased ex-tax and used at this place of business should be entered on line B2 below the county schedule.

A	B	C	A	B	C
COUNTY IN WHICH TAXABLE TRANSACTION OCCURRED	CODE	AMOUNT OF 1% COMBINED STATE AND LOCAL TAX	COUNTY IN WHICH TAXABLE TRANSACTION OCCURRED	CODE	AMOUNT OF 1% COMBINED STATE AND LOCAL TAX
ALAMEDA	01	.00	PLACER	31	.00
ALPINE	02	.00	PLUMAS	32	.00
AMADOR	03	.00	RIVERSIDE	33	.00
BUTTE	04	.00	SACRAMENTO	34	.00
CALAVERAS	05	.00	SAN BENITO	35	.00
COLUSA	06	.00	SAN BERNARDINO	36	.00
CONTRA COSTA	07	.00	SAN DIEGO	37	.00
DEL NORTE	08	.00	SAN FRANCISCO	38	.00
EL DORADO	09	.00	SAN JOAQUIN	39	.00
FRESNO	10	.00	SAN LUIS OBISPO	40	.00
GLENN	11	.00	SAN MATEO	41	.00
HUMBOLDT	12	.00	SANTA BARBARA	42	.00
IMPERIAL	13	.00	SANTA CLARA	43	.00
INYO	14	.00	SANTA CRUZ	44	.00
KERN	15	.00	SHASTA	45	.00
KINGS	16	.00	SIERRA	46	.00
LAKE	17	.00	SISKIYOU	47	.00
LASSEN	18	.00	SOLANO	48	.00
LOS ANGELES	19	.00	SONOMA	49	.00
MADERA	20	.00	STANISLAUS	50	.00
MARIN	21	.00	SUTTER	51	.00
MARIPOSA	22	.00	TEHAMA	52	.00
MENDOCINO	23	.00	TRINITY	53	.00
MERCED	24	.00	TULARE	54	.00
MODOC	25	.00	TUOLUMNE	55	.00
MONO	26	.00	VENTURA	56	.00
MONTEREY	27	.00	YOLO	57	.00
NAPA	28	.00	YUBA	58	.00
NEVADA	29	.00			
ORANGE	30	.00			

B1. Total 1% combined state and local tax for all counties listed above	B1. \$.00
B2. Total 1% combined state and local tax on sales made and merchandise consumed at your permanent place of business in California. (Do not include any tax allocated to the above counties)	B2. \$.00
B3. Total 1% combined state and local tax reported on Schedule F	B3. \$.00
B4. Total 1% combined state and local tax reported on Schedule L	B4. \$.00
B5. Total 1% combined state and local tax liability (add lines B1, B2, B3, and B4) This total tax must agree with line 17 on the return form	B5. \$.00

BOARD USE ONLY			
Tax Area Code			

SCHEDULE B
DETAILED ALLOCATION BY COUNTY OF COMBINED STATE
AND UNIFORM LOCAL SALES AND USE TAX

If your business activities come within one or more of the categories listed below, part or all of your state and local sales and use tax should be allocated among the counties listed on Schedule B, Detailed Allocation by County of Uniform Local Sales and Use Tax. Enter in Column C, after the name of the appropriate county, the amount of local tax allocable to the county according to the instructions below that are applicable to your business.

1. AUCTIONEERS (*Ref. Regulations 1802 and 1803*)

For auction events at temporary sales locations where taxable gross sales are \$500,000 or more, the combined state and local sales tax should be reported on the BOE-530-B, Combined State and Local Tax Allocation for Temporary Sales Locations and Certain Auctioneers. For all other auction events at temporary sales locations, the amount of combined state and local sales tax on sales made away from your permanent place of business should be entered in Column C of this form, opposite the name of each county in which auctions were held. Enter on line B2 any amount of combined state and local tax that is applicable to auction sales, over-the-counter sales or other transactions at your permanent place of business.

2. OUT-OF-STATE RETAILERS WHO HAVE BEEN AUTHORIZED BY THIS BOARD TO OPERATE UNDER SECTION 6015 (*Regulation 1802*)

Enter in Column C the amount of combined state and local tax on sales made by representatives who operate from locations in each county.

3. VENDING MACHINE OPERATORS (*Regulations 1574 and 1802*)

Enter in Column C, the amount of combined state and local tax on sales made from vending machines located in each county. Enter on line B2 any amount of combined state and local tax which is applicable to sales of equipment or other transactions at your permanent place of business.

4. OUT-OF-STATE SELLERS ENGAGED IN BUSINESS IN CALIFORNIA WHO HAVE NO PLACE OF BUSINESS IN-STATE (*Regulations 1802 and 1803*)

Sales of goods delivered by these sellers from stocks located in California are subject to the combined state and local sales tax. Include the amounts of such tax on line B2 of this form.

Sales of goods by these sellers, delivered from out-of-state locations with title passing to a California purchaser at a point outside of California are subject to combined state and local use tax. For transactions of \$500,000 or more by sellers engaged in business in California, the combined state and local use tax should be reported on Schedule F, Detailed Allocation of 1% Combined State and Uniform Local Sales and Use Tax. For all other sales, enter the amount of combined state and local use tax in Column C opposite the county of destination.

Sellers not engaged in business in California, but who voluntarily collect and report use tax may report transactions of \$500,000 or more on Schedule F, Detailed Allocation of 1% Combined State and Uniform Local Sales and Use Tax, in accordance with the above, or continue to report on Schedule B.

5. CONSTRUCTION CONTRACTORS (*Regulation 1806*)

A contractor must report the combined state and local tax with respect to materials and fixtures involved in construction contracts according to the county location of the jobsite where use occurred. Enter this tax in Column C opposite the appropriate county.

Enter on line B2 any amount of combined state and local tax applicable to retail store sales or regular retail sales at your permanent place of business which do not involve a construction contract.

6. PERSONS MAKING EX-TAX PURCHASES FOR USE AT LOCATIONS WHERE A SELLER'S PERMIT IS NOT REQUIRED (*Regulation 1803*)

A person who purchases tangible personal property without payment of combined state and uniform local tax is liable for combined state and local use tax on such purchases. If the property is used at a location for which a seller's permit **is not** required, and is a purchase of less than \$500,000, enter the amount in Column C of this form opposite the county where the property is used. If property is used at a location for which a seller's permit **is not** required and is a purchase of \$500,000 or more, local tax should be reported on Schedule F, Detailed Allocation of 1% Combined State and Uniform Local Sales and Use Tax.

Line B2. **COMBINED STATE AND LOCAL TAX AT PERMANENT PLACE OF BUSINESS.** Enter here the amount of combined state and local tax on sales made and merchandise consumed at your permanent place of business in California. Do not include any combined state and local use tax reported by counties in Column C.

NOTE: If you are furnished with Schedule C, Detailed Allocation by Suboutlet of Combined State and Uniform Local Sales and Use Tax, the amount entered on line B2 must agree with the total amount of Combined State and Local Tax shown on Schedule C.

7. MOTOR VEHICLE LEASES

If you are a lessor of motor vehicles who is not required to use Schedule F, you should report the 1% combined state and local tax on Schedule B (the tax should be reported in the county where the vehicle is registered).

8. BAD DEBT LENDERS

If you are claiming a deduction for Bad Debt-Lender, you are required to complete Schedule L. In most cases, the Schedule L total needs to be entered on line "B4" as a negative number. However, if bad debt-lender recoveries exceed losses, the Schedule L total would be a positive amount.

BOE-530 (FRONT) REV. 17 (7-04)

STATE OF CALIFORNIA
BOARD OF EQUALIZATION**SCHEDULE C-DETAILED ALLOCATION BY
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

The original copy of this schedule must be attached to your return.
Read instructions before preparing.

Please round cents to the
nearest whole dollar.

TAXING JURISDICTION IN WHICH BUSINESS ESTABLISHMENTS ARE LOCATED	SUB- OUTLET NO.	TAX AREA CODE				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
COLUMN 1		CO.	JUR.	ADD- ON	IN LIEU	COLUMN 3
TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either form BOE-531, Schedule B, or form BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.						

OWNER'S NAME

ACCOUNT NUMBER	INDUSTRY	TAX CODE	ZIP CODE	PERIOD	PAGE
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INSTRUCTIONS

SCHEDULE C - DETAILED ALLOCATION

BY SUBOUTLET OF THE 1% COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX

GENERAL

When a consolidated sales and use tax return is filed, covering more than one seller's permit, the 1% combined state and local taxes must be allocated among the cities and unincorporated areas of counties in which sales outlets are located. Schedule C lists the addresses of all your places of business for which seller's permits have been issued. Locations within a single city, or within the unincorporated area of a single county, are grouped. Each group is separated from the following group by a space and an asterisk (*).

COLUMN 1-TAXING JURISDICTION IN WHICH BUSINESS ESTABLISHMENTS ARE LOCATED

Street addresses for your places of business are entered here as shown by our records. The taxing jurisdiction indicates the city in which the business is situated, or the county of location if the business is not within a city. A county having the same name as one of its cities can be distinguished from the city by the Tax Area Code entry in Column 2. County codes show as "998" in digits 3, 4 and 5, while city codes show as different numbers. Entries in the column headed "Sub-outlet Number" provide numerical identification of your sales outlets for Board records.

If you have closed any of the places listed, either before or during the period covered by this return, enter the word "closed" just **below** the street address. Enter the amounts of the 1% combined state and local tax just as you do for other places of business, or the word "None" if no taxable transactions occurred during the reporting period.

If, during the reporting period, you have operated any place of business in California which is not listed here, enter at the end of the list the street address and name of the Post Office serving the area. If in a city with a different name than the Post Office, enter the name of the city also. If the location has no street number, enter the street or road and the name of the Post Office. State whether the location is inside the city or town whose name corresponds to that of the Post Office (e.g., Highland Road, three miles outside Greenburg).

COLUMN 2-TAX AREA CODE

You need not make any entry in this column. Code numbers shown here identify the taxing jurisdiction in which each business establishment is located.

COLUMN 3-AMOUNT OF 1% COMBINED STATE AND LOCAL TAX

Enter in this column the amount of the 1% combined state and local tax for each business establishment, opposite the business address. "Total for this tax code" appears where two or more places of business are located in one taxing jurisdiction. Enter in Column 3, the total combined state and local taxes for all places of business in that taxing jurisdiction opposite the asterisk (*). If you have only one business establishment in a local taxing jurisdiction, enter **only** the figures directly opposite the address and do not make any entry opposite the asterisk. Enter the word "None" opposite the address of any establishment operated during the period covered by this return if no tax liability accrued at that location.

TOTAL AMOUNT OF COMBINED STATE AND LOCAL TAX

The total of Column 3 for all pages of Schedule C should agree with line 17 of your return, unless you have received a Schedule B or Schedule L. Schedule B is used for allocating the 1% combined state and local taxes on transactions not occurring at a permanent place of business. Schedule L is used to de-allocate the 1% combined state and local tax on lender bad debt deductions. If you are preparing a Schedule L, this Schedule C total must be entered on line L2 of Schedule L. If you are preparing a Schedule B, this Schedule C total must be entered on line B2 of Schedule B.

**IF YOU HAVE QUESTIONS OR NEED ADDITIONAL INFORMATION,
PLEASE CONTACT OUR INFORMATION CENTER AT 800-400-7115.**

AUDITED POOLING IMPACT OVERVIEW
NET CHANGE \$'S ORDER

CITY	(A) 2Q95 NET CHANGE	(B) 1ST, 3RD & 4TH PROJECTED CHANGE	(C) TOTAL NET CHANGE (A+B)
SAN RAMON	496,552	1,365,802	3,870,490
IRVINE	425,595	1,171,622	2,895,638
SAN DIEGO	258,857	710,527	2,365,396
SANTA CLARA	235,926	650,496	1,150,413
EL SEGUNDO	151,286	416,135	1,042,884
CYPRESS	140,492	386,640	927,148
SAN JOSE	129,441	360,229	836,902
SAN MATEO	122,151	335,914	743,966
SANTA ANA	109,265	301,577	692,871
ORANGE	101,740	280,450	684,751
LA PALMA	94,008	258,635	667,231
BRISBANE	80,852	222,389	569,470
FOSTER CITY	77,212	212,359	493,483
ALAMEDA	74,880	206,005	384,862
TULARE	74,265	204,198	380,428
SANTA FE SPRINGS	72,484	199,344	373,044
VENTURA	59,176	162,486	369,316
HAYWARD	51,863	142,812	345,752
TUSTIN	37,889	104,596	337,745
SACRAMENTO	36,579	102,295	277,296
HUNTINGTON BEACH	36,255	100,262	236,154
CONCORD	33,063	90,753	203,113
CULVER CITY	32,640	89,763	135,037
BERKELEY	29,663	81,667	118,083
MILPITAS	26,769	74,118	115,978
PLEASANTON	24,841	68,404	106,895
SACRAMENTO CO UNINCORP	22,582	65,068	105,924
PASADENA	22,862	62,842	97,437
THOUSAND OAKS	21,697	59,376	94,286
ONTARIO	20,976	57,210	92,039
COMMERCE	14,500	39,863	75,673
UNION CITY	13,343	36,743	72,311
CORONA	13,155	35,836	56,176
COSTA MESA	11,381	32,085	54,375
ANAHEIM	10,548	30,162	51,038
CARSON	10,264	28,204	50,596
LONG BEACH	6,985	19,163	48,604
SAN CLEMENTE	6,877	19,012	47,383
DANVILLE	6,375	17,505	44,757
NOVATO	6,419	17,458	37,758
ANTIOCH	6,341	17,387	32,829
OAKLAND	5,303	14,779	31,347
WALNUT CREEK	5,065	13,797	26,125
SO. SAN FRANCISCO	4,437	12,126	26,073
BELMONT	4,015	11,027	22,087

AUDITED POOLING IMPACT OVERVIEW
NET CHANGE \$'S ORDER

CITY	(A) 2Q95 NET CHANGE	(B) 1ST, 3RD & 4TH PROJECTED CHANGE	(C) TOTAL NET CHANGE (A+B)
LAKEWOOD	3,743	10,283	6,673
MONTEREY	3,459	9,357	4,257
PLEASANT HILL	2,534	6,924	3,110
LARKSPUR	675	1,799	417
LA HABRA HEIGHTS	549	1,509	(7)
TORRANCE	347	892	(55)
TEHAMA	(1)	(4)	(117)
BRADBURY	(10)	(27)	(128)
BIGGS	(16)	(45)	(139)
ROLLING HILLS	(23)	(63)	(168)
HIDDEN HILLS	(25)	(69)	(173)
ROSS	(28)	(79)	(214)
BELVEDERE	(29)	(81)	(259)
BLUE LAKE	(40)	(112)	(259)
MONO CO UNINCORP	(40)	(126)	(300)
RIO DELL	(48)	(135)	(325)
TRINIDAD	(48)	(135)	(356)
LIVE OAK	(62)	(176)	(374)
AMADOR	(70)	(190)	(467)
POINT ARENA	(70)	(193)	(487)
DORRIS	(73)	(200)	(507)
ALPINE CO UNINCORP	(77)	(217)	(526)
TULELAKE	(84)	(231)	(556)
PORTOLA	(82)	(233)	(562)
CANYON LAKE	(90)	(249)	(569)
FERNDALE	(94)	(264)	(663)
MONTE SERENO	(105)	(288)	(714)
WESTMORELAND	(106)	(292)	(737)
ETNA	(126)	(347)	(761)
LIVINGSTON	(127)	(358)	(766)
McFARLAND	(131)	(363)	(775)
SAN JUAN BAUTISTA	(132)	(369)	(855)
GUSTINE	(133)	(374)	(875)
MAMMOTH LAKES	(128)	(404)	(915)
HUGHSON	(141)	(392)	(927)
ORANGE COVE	(147)	(408)	(969)
AVENAL	(149)	(415)	(981)
HILLSBOROUGH	(150)	(414)	(982)
HURON	(161)	(445)	(1,011)
LOYALTON	(165)	(452)	(1,024)
ATHERTON	(169)	(464)	(1,049)
CALIPATRIA	(169)	(466)	(1,087)
MONTAGUE	(171)	(469)	(1,122)
CALIFORNIA CITY	(170)	(471)	(1,148)
DOS PALOS	(168)	(473)	(1,176)

AUDITED POOLING IMPACT OVERVIEW
NET CHANGE \$'S ORDER

CITY	(A) 2Q95 NET CHANGE	(B) 1ST, 3RD & 4TH PROJECTED CHANGE	(C) TOTAL NET CHANGE (A+B)
GUADALUPE	(173)	(479)	(1,187)
DEL REY OAKS	(179)	(496)	(1,240)
SAN JOAQUIN	(182)	(505)	(1,251)
WATERFORD	(188)	(524)	(1,291)
SHASTA LAKE	(188)	(527)	(1,350)
WOODLAKE	(215)	(594)	(1,360)
PARLIER	(216)	(599)	(1,413)
MARICOPA	(218)	(604)	(1,470)
SIERRA CO UNINCORP	(224)	(614)	(1,476)
PORTOLA VALLY	(237)	(652)	(1,516)
ISLETON	(248)	(678)	(1,522)
FAIRFAX	(245)	(687)	(1,558)
FORT JONES	(252)	(692)	(1,663)
FARMERSVILLE	(262)	(726)	(1,806)
HOLTVILLE	(284)	(783)	(1,838)
CALIMESA	(285)	(792)	(1,870)
YOUNTVILLE	(313)	(866)	(1,923)
GREENFIELD	(327)	(909)	(1,956)
CLOVERDALE	(331)	(918)	(1,975)
GONZALES	(333)	(925)	(1,989)
SOLEDAD	(339)	(941)	(2,088)
ANGELS CAMP	(346)	(971)	(2,108)
TIBURON	(347)	(976)	(2,120)
LOS ALTOS HILLS	(367)	(1,005)	(2,121)
GRAND TERRACE	(369)	(1,021)	(2,129)
SIERRA MADRE	(377)	(1,036)	(2,133)
RIVERBANK	(392)	(1,091)	(2,143)
TRINITY CO UNINCORP	(399)	(1,122)	(2,192)
LOOMIS	(409)	(1,130)	(2,242)
PEIDMONT	(419)	(1,152)	(2,326)
CLEARLAKE	(411)	(1,165)	(2,329)
LINDSAY	(427)	(1,182)	(2,424)
ORLAND	(428)	(1,200)	(2,463)
MENDOTA	(438)	(1,215)	(2,469)
TEHAMA CO UNINCORP	(442)	(1,239)	(2,496)
WHEATLAND	(457)	(1,247)	(2,582)
NEWMAN	(452)	(1,260)	(2,650)
LAKEPORT	(455)	(1,292)	(2,761)
PALOS VERDES ESTATES	(474)	(1,303)	(2,780)
DUNSMUIR	(481)	(1,321)	(2,811)
PLYMOUTH	(491)	(1,344)	(2,891)
WINTERS	(491)	(1,347)	(2,920)
GRIDLEY	(488)	(1,364)	(2,946)
ARVIN	(535)	(1,482)	(2,962)
VILLA PARK	(540)	(1,481)	(3,005)

AUDITED POOLING IMPACT OVERVIEW
NET CHANGE \$'S ORDER

CITY	(A) 2Q95 NET CHANGE	(B) 1ST, 3RD & 4TH PROJECTED CHANGE	(C) TOTAL NET CHANGE (A+B)
CLAYTON	(539)	(1,485)	(3,050)
FOWLER	(542)	(1,504)	(3,254)
PATTERSON	(541)	(1,507)	(3,418)
SAN ANSELMO	(541)	(1,521)	(3,536)
KINGSBURG	(568)	(1,576)	(3,537)
GLENN CO UNINCORP	(568)	(1,591)	(3,570)
CALISTOGA	(574)	(1,589)	(3,580)
CARLSBAD	(556)	(1,669)	(3,673)
IONE	(598)	(1,637)	(3,736)
FIREBAUGH	(594)	(1,649)	(3,745)
NEVADA CITY	(594)	(1,653)	(3,781)
WILLOWS	(607)	(1,700)	(3,790)
ATWATER	(619)	(1,740)	(3,978)
COLFAX	(645)	(1,783)	(4,119)
EAST PALO ALTO	(651)	(1,793)	(4,142)
DESERT HOT SPRINGS	(654)	(1,816)	(4,207)
ESCALON	(678)	(1,873)	(4,287)
PLUMAS CO UNINCORP	(666)	(1,890)	(4,322)
EXETER	(688)	(1,904)	(4,356)
LINCOLN	(689)	(1,906)	(4,392)
WOODSIDE	(722)	(1,990)	(4,683)
CORCORAN	(716)	(1,997)	(4,687)
NEEDLES	(742)	(2,054)	(4,727)
MARINA	(742)	(2,060)	(4,756)
SAN BENITO CO UNINCORP	(741)	(2,071)	(4,760)
INDIAN WELLS	(746)	(2,072)	(5,012)
ANDERSON	(748)	(2,098)	(5,047)
WILLIAMS	(760)	(2,094)	(5,083)
TEHACHAPI	(798)	(2,210)	(5,113)
TWENTYNINE PALMS	(799)	(2,212)	(5,130)
FORTUNA	(798)	(2,230)	(5,143)
CORNING	(800)	(2,244)	(5,346)
KERMAN	(807)	(2,237)	(5,357)
LEMOORE	(815)	(2,271)	(5,371)
WASCO	(837)	(2,317)	(5,391)
COALINGA	(848)	(2,353)	(5,402)
BEAUMONT	(851)	(2,363)	(5,502)
LAKE CO UNINCORP	(861)	(2,444)	(5,514)
CHOWCHILLA	(896)	(2,477)	(5,570)
FILLMORE	(897)	(2,480)	(5,631)
COLTON	(878)	(2,539)	(5,640)
SAN MARINO	(914)	(2,514)	(5,763)
COTATI	(923)	(2,557)	(5,840)
LATHROP	(935)	(2,584)	(5,960)
SAN JACINTO	(947)	(2,630)	(5,998)

AUDITED POOLING IMPACT OVERVIEW
NET CHANGE S'S ORDER

CITY	(A) 2Q95 NET CHANGE	(B) 1ST, 3RD & 4TH PROJECTED CHANGE	(C) TOTAL NET CHANGE (A+B)
ADELANTO	(961)	(2,659)	(6,034)
PARADISE	(975)	(2,725)	(6,067)
CALAVERAS CO UNINCORP	(978)	(2,741)	(6,124)
WILLITS	(1,003)	(2,777)	(6,151)
PORT HUENEME	(1,008)	(2,786)	(6,197)
KINGS CO UNINCORP	(1,002)	(2,794)	(6,457)
HERCULES	(1,018)	(2,805)	(6,552)
IMPERIAL BEACH	(1,033)	(2,848)	(6,565)
MILL VALLEY	(1,031)	(2,897)	(6,614)
KING CITY	(1,043)	(2,896)	(6,620)
WEED	(1,069)	(2,934)	(6,730)
BUELLTON	(1,069)	(2,965)	(6,805)
IMPERIAL	(1,080)	(2,980)	(6,876)
SAUSALITO	(1,074)	(3,019)	(6,881)
SOLVANG	(1,097)	(3,043)	(6,907)
LOS BANOS	(1,090)	(3,065)	(7,066)
GROVER CITY	(1,109)	(3,062)	(7,107)
RIO VISTA	(1,116)	(3,067)	(7,182)
SAND CITY	(1,118)	(3,105)	(7,272)
RIPON	(1,144)	(3,161)	(7,293)
AMERICAN CANYON	(1,157)	(3,203)	(7,328)
COACHELLA	(1,157)	(3,213)	(7,422)
AVALON	(1,183)	(3,255)	(7,428)
CARPENTERIA	(1,180)	(3,272)	(7,509)
SHAFTER	(1,193)	(3,305)	(7,516)
SONORA	(1,203)	(3,366)	(7,616)
SUTTER CO UNINCORP	(1,219)	(3,449)	(7,844)
ARCATA	(1,231)	(3,440)	(8,042)
RIDGECREST	(1,230)	(3,441)	(8,056)
MORAGA	(1,270)	(3,500)	(8,066)
HIGHLAND	(1,283)	(3,551)	(8,101)
OJAI	(1,286)	(3,554)	(8,144)
SUTTER CREEK	(1,306)	(3,575)	(8,156)
ORINDA	(1,312)	(3,616)	(8,328)
BIG BEAR LAKE	(1,325)	(3,669)	(8,362)
BLYTHE	(1,326)	(3,682)	(8,371)
SEBASTOPOL	(1,346)	(3,730)	(8,399)
MARIN CO UNINCORP	(1,357)	(3,813)	(8,461)
WINDSOR	(1,386)	(3,842)	(8,477)
CHINO HILLS	(1,395)	(3,863)	(8,521)
TRUCKEE	(1,400)	(3,897)	(8,814)
DINUBA	(1,409)	(3,898)	(8,896)
DEL MAR	(1,436)	(3,959)	(9,038)
YUCIAPA	(1,441)	(3,989)	(9,070)
SANGER	(1,439)	(3,993)	(9,100)

AUDITED POOLING IMPACT OVERVIEW
NET CHANGE \$'S ORDER

CITY	(A) 2Q95 NET CHANGE	(B) 1ST, 3RD & 4TH PROJECTED CHANGE	(C) TOTAL NET CHANGE (A+B)
TAFT	(1,504)	(4,166)	(9,143)
DIAMOND BAR	(1,514)	(4,169)	(9,210)
REEDLEY	(1,511)	(4,192)	(9,522)
SHASTA CO UNINCORP	(1,522)	(4,267)	(9,572)
RED BLUFF	(1,552)	(4,353)	(9,708)
FORT BRAGG	(1,572)	(4,352)	(9,797)
COLUSA	(1,580)	(4,352)	(9,912)
SUISUN	(1,586)	(4,360)	(10,215)
HAWAIIAN GARDENS	(1,590)	(4,375)	(10,292)
SAINT HELENA	(1,594)	(4,415)	(10,372)
HOLLISTER	(1,588)	(4,436)	(10,459)
LA QUINTA	(1,625)	(4,512)	(10,462)
PETALUMA	(1,607)	(4,583)	(10,499)
PACIFIC GROVE	(1,653)	(4,591)	(10,910)
MORRO BAY	(1,661)	(4,587)	(10,952)
OAKDALE	(1,690)	(4,711)	(10,997)
BANNING	(1,729)	(4,801)	(11,199)
SISKIYOU CO UNINCORP	(1,762)	(4,835)	(11,209)
MERCED CO UNINCORP	(1,739)	(4,888)	(11,297)
RANCHO PALOS VERDES	(1,771)	(4,874)	(11,325)
APPLE VALLEY	(1,793)	(4,964)	(11,353)
HUMBOLDT CO UNINCORP	(1,782)	(4,979)	(11,692)
TUOLUMNE CO UNINCORP	(1,806)	(5,052)	(11,750)
SONOMA	(1,863)	(5,164)	(11,784)
MOORPARK	(1,872)	(5,175)	(11,967)
EMERYVILLE	(1,897)	(5,185)	(12,104)
MOUNT SHASTA	(1,900)	(5,215)	(12,110)
PISMO BEACH	(1,906)	(5,264)	(12,161)
HALF MOON BAY	(1,923)	(5,296)	(12,247)
PACIFICA	(1,940)	(5,342)	(12,264)
CUDAHY	(1,950)	(5,365)	(12,687)
OROVILLE	(1,963)	(5,487)	(12,775)
YUBA CITY	(1,977)	(5,645)	(12,844)
BRENTWOOD	(2,030)	(5,595)	(12,856)
CARMEL	(2,086)	(5,792)	(13,297)
MANTECA	(2,087)	(5,809)	(13,624)
MAYWOOD	(2,139)	(5,885)	(13,815)
MARTINEZ	(2,154)	(5,957)	(13,858)
SANTA PAULA	(2,177)	(6,018)	(14,111)
IMPERIAL CO UNINCORP	(2,195)	(6,056)	(14,229)
BRAWLEY	(2,266)	(6,252)	(14,354)
MURIETA	(2,266)	(6,293)	(14,628)
LOMITA	(2,283)	(6,282)	(14,734)
NORCO	(2,309)	(6,413)	(14,896)
HEALDSBURG	(2,314)	(6,414)	(14,954)

AUDITED POOLING IMPACT OVERVIEW
NET CHANGE \$'S ORDER

CITY	(A) 2095 NET CHANGE	(B) 1ST, 3RD & 4TH PROJECTED CHANGE	(C) TOTAL NET CHANGE (A+B)
ARROYO GRANDE	(2,331)	(6,439)	(15,122)
YUCCA VALLEY	(2,368)	(6,555)	(15,130)
CERES	(2,357)	(6,570)	(15,219)
GRASS VALLEY	(2,395)	(6,666)	(15,255)
GALT	(2,426)	(6,647)	(15,274)
COLUSA CO UNINCORP	(2,417)	(6,657)	(15,478)
DELANO	(2,412)	(6,682)	(15,482)
ROLLING HILLS ESTATE	(2,435)	(6,699)	(15,623)
NEVADA CO UNINCORP	(2,498)	(6,953)	(15,767)
CORTE MADERA	(2,516)	(7,069)	(16,007)
AUBURN	(2,571)	(7,111)	(16,129)
WALNUT	(2,633)	(7,245)	(16,195)
SOLANA BEACH	(2,641)	(7,284)	(16,266)
CORONADO	(2,649)	(7,306)	(16,779)
WESTLAKE VILLAGE	(2,662)	(7,325)	(16,840)
DIXON	(2,678)	(7,360)	(16,938)
BUTTE CO UNINCORP	(2,650)	(7,407)	(17,011)
SOUTH PASADENA	(2,704)	(7,440)	(17,113)
SOLANO CO UNINCORP	(2,770)	(7,612)	(17,114)
LOMA LINDA	(2,803)	(7,759)	(17,449)
SAN PABLO	(2,857)	(7,874)	(17,595)
SELMA	(2,869)	(7,957)	(17,601)
PINOLE	(2,884)	(7,948)	(17,630)
PERRIS	(2,878)	(7,993)	(17,702)
LOMPOC	(2,882)	(7,990)	(17,714)
ALBANY	(2,910)	(7,996)	(17,820)
SAN RAFAEL	(2,840)	(8,256)	(18,077)
LAKE ELSINORE	(2,980)	(8,274)	(18,138)
RANCHO MIRAGE	(3,003)	(8,340)	(18,141)
LA CANADA-FLINTRIDGE	(3,027)	(8,329)	(18,232)
MALIBU	(3,058)	(8,415)	(18,340)
TEMPLE CITY	(3,059)	(8,416)	(18,606)
BELL GARDENS	(3,118)	(8,580)	(18,842)
UKIAH	(3,152)	(8,729)	(18,874)
ARTESIA	(3,184)	(8,763)	(19,024)
MERCED	(3,130)	(8,892)	(19,205)
ROCKLIN	(3,207)	(8,870)	(19,288)
SEASIDE	(3,209)	(8,911)	(19,315)
ATASCADERO	(3,239)	(8,948)	(19,401)
INYO CO UNINCORP	(3,291)	(9,011)	(19,476)
MARIPOSA CO UNINCORP	(3,299)	(9,074)	(19,584)
LAFAYETTE	(3,385)	(9,330)	(19,633)
PLACERVILLE	(3,442)	(9,519)	(19,983)
HESPERIA	(3,449)	(9,549)	(20,206)
CALABASAS	(3,467)	(9,540)	(20,357)

AUDITED POOLING IMPACT OVERVIEW
NET CHANGE \$'S ORDER

CITY	(A) 2Q95 NET CHANGE	(B) 1ST, 3RD & 4TH PROJECTED CHANGE	(C) TOTAL NET CHANGE (A+B)
HERMOSA BEACH	(3,480)	(9,577)	(20,502)
BELL	(3,500)	(9,630)	(20,777)
SARATOGA	(3,621)	(9,919)	(20,806)
SOUTH LAKE TAHOE	(3,609)	(9,982)	(21,785)
CLAREMONT	(3,664)	(10,082)	(21,985)
MENDOCINO CO UNINCORP	(3,770)	(10,439)	(22,746)
INDIO	(3,776)	(10,486)	(22,990)
EL CERRITO	(3,840)	(10,585)	(22,992)
NAPA CO UNINCORP	(3,828)	(10,602)	(23,137)
YOLO CO UNINCORP	(3,898)	(10,706)	(23,175)
JACKSON	(3,939)	(10,782)	(23,239)
MILLBRAE	(3,990)	(10,990)	(23,286)
LAWNDALE	(4,109)	(11,305)	(23,919)
LA PUENTE	(4,109)	(11,306)	(23,964)
LA VERNE	(4,135)	(11,377)	(24,247)
LYNWOOD	(4,161)	(11,451)	(24,435)
HANFORD	(4,217)	(11,756)	(24,667)
DEL NORTE CO UNINCORP	(4,294)	(11,742)	(24,670)
EL MONTE	(4,326)	(11,921)	(24,733)
CRESENT CITY	(4,371)	(11,953)	(24,848)
TURLOCK	(4,305)	(12,021)	(24,861)
SCOTTS VALLEY	(4,371)	(12,007)	(24,912)
LASSEN CO UNINCORP	(4,406)	(12,047)	(24,922)
DUARTE	(4,443)	(12,225)	(25,360)
YREKA	(4,489)	(12,317)	(26,226)
PASO ROBLES	(4,565)	(12,611)	(26,315)
VENTURA CO UNINCORP	(4,695)	(12,977)	(26,798)
LEMON GROVE	(4,716)	(13,005)	(26,807)
SEAL BEACH	(4,756)	(13,040)	(27,160)
CALEXICO	(4,768)	(13,151)	(27,997)
EUREKA	(4,899)	(13,689)	(28,082)
PORTERVILLE	(4,980)	(13,780)	(28,627)
AGOURA HILLS	(5,003)	(13,767)	(28,654)
MADERA CO UNINCORP	(5,047)	(13,957)	(29,188)
IRWINDALE	(5,121)	(14,090)	(31,490)
MADERA	(5,115)	(14,146)	(32,094)
CATHEDRAL CITY	(5,155)	(14,317)	(32,306)
OCEANSIDE	(5,188)	(14,368)	(32,455)
SAN LUIS OBISPO CO UNINCORP	(5,259)	(14,529)	(32,656)
HEMET	(5,292)	(14,697)	(33,169)
RIALTO	(5,565)	(15,406)	(33,524)
MANHATTAN BEACH	(5,622)	(15,476)	(34,471)
SAN DIMAS	(5,628)	(15,485)	(34,824)
AMADOR CO UNINCORP	(5,658)	(15,488)	(35,149)
TRACY	(5,648)	(15,602)	(35,297)

AUDITED POOLING IMPACT OVERVIEW
NET CHANGE \$'S ORDER

CITY	(A)	(B)	(C)
	2Q95 NET CHANGE	1ST, 3RD & 4TH PROJECTED CHANGE	TOTAL NET CHANGE (A+B)
PALM SPRINGS	(5,670)	(15,746)	(35,379)
LAGUNA BEACH	(5,742)	(15,725)	(35,916)
ROSEMEAD	(5,735)	(15,782)	(35,992)
ROHNERT PARK	(5,837)	(16,181)	(36,135)
BISHOP	(5,970)	(16,345)	(37,971)
POWAY	(6,018)	(16,600)	(38,143)
MONTEREY CO UNINCORP	(6,025)	(16,732)	(38,512)
SANTA ROSA	(5,938)	(16,829)	(38,547)
BARSTOW	(6,097)	(16,881)	(38,988)
SAN GABRIEL	(6,308)	(17,357)	(39,097)
EL DORADO CO UNINCORP	(6,658)	(18,412)	(39,489)
BENICIA	(6,729)	(18,495)	(39,661)
CHICO	(6,653)	(18,625)	(40,511)
BALDWIN PARK	(6,817)	(18,757)	(41,585)
REDLANDS	(6,786)	(18,799)	(41,943)
CAMARILLO	(6,796)	(18,796)	(42,201)
SOUTH EL MONTE	(6,889)	(18,955)	(42,946)
MORENO VALLEY	(6,845)	(19,025)	(43,186)
LOS ALTOS	(6,930)	(18,979)	(43,277)
AZUSA	(6,967)	(19,172)	(43,409)
LOS ALAMITOS	(7,177)	(19,672)	(43,596)
TULARE CO UNINCORP	(7,300)	(20,199)	(44,727)
DANA POINT	(7,457)	(20,445)	(45,960)
EL CENTRO	(7,455)	(20,563)	(46,905)
COMPTON	(7,512)	(20,673)	(47,407)
SANTEE	(7,582)	(20,910)	(47,412)
NAPA	(7,699)	(21,335)	(47,556)
GLENORA	(7,859)	(21,625)	(47,926)
BURLINGAME	(7,955)	(21,933)	(48,202)
UPLAND	(7,934)	(21,965)	(48,565)
DAVIS	(7,994)	(21,955)	(48,647)
MONTEREY PARK	(7,993)	(21,994)	(49,676)
STANISLAUS CO UNINCORP	(7,926)	(22,091)	(50,111)
PALM DESERT	(8,012)	(22,266)	(50,855)
TEMECULA	(8,090)	(22,466)	(50,875)
SAN CARLOS	(8,277)	(22,796)	(50,973)
ENCINAS	(8,299)	(22,886)	(51,120)
LA MIRADA	(8,472)	(23,312)	(51,245)
LODI	(8,447)	(23,342)	(51,500)
NEWPORT BEACH	(8,615)	(23,299)	(51,808)
VISTA	(8,522)	(23,507)	(51,861)
RANCHO CUCAMONGA	(8,607)	(23,885)	(51,931)
HUNTINGTON PARK	(8,694)	(23,922)	(52,247)
STANTON	(8,763)	(24,027)	(52,812)
CLOVIS	(8,710)	(24,157)	(52,851)

AUDITED POOLING IMPACT OVERVIEW
NET CHANGE \$'S ORDER

CITY	(A) 2Q95 NET CHANGE	(B) 1ST, 3RD & 4TH PROJECTED CHANGE	(C) TOTAL NET CHANGE (A+B)
REDDING	(8,727)	(24,502)	(53,095)
SAN BRUNO	(8,939)	(24,628)	(54,610)
SANTA CLARA CO UNINCORP	(9,173)	(25,129)	(54,881)
WATSONVILLE	(9,230)	(25,354)	(55,887)
SOUTH GATE	(9,419)	(25,919)	(56,518)
SANTA BARBARA CO UNINCORP	(9,451)	(26,202)	(56,660)
SUSANVILLE	(9,724)	(26,588)	(57,120)
SAN LIUS OBISPO	(9,703)	(26,803)	(57,212)
SAN FERNANDO	(9,759)	(26,854)	(57,769)
MENLO PARK	(9,845)	(27,124)	(57,904)
CAPITOLA	(10,000)	(27,470)	(58,133)
MONROVIA	(9,988)	(27,484)	(59,250)
CHINO	(9,977)	(27,632)	(59,308)
SONOMA CO UNINCORP	(10,046)	(27,848)	(59,466)
PARAMOUNT	(10,126)	(27,862)	(59,477)
REDWOOD CITY	(10,110)	(27,896)	(59,853)
BELLFLOWER	(10,208)	(28,088)	(59,954)
PLACER CO UNINCORP	(10,184)	(28,165)	(60,311)
VERNON	(10,324)	(28,407)	(60,679)
COLMA	(10,419)	(28,697)	(62,644)
FRESNO CO UNINCORP	(10,386)	(28,806)	(62,670)
SANTA MARIA	(10,452)	(28,979)	(63,306)
VICTORVILLE	(10,622)	(29,419)	(64,562)
PLACENTIA	(10,746)	(29,464)	(65,186)
LA HABRA	(10,867)	(29,753)	(65,441)
MODESTO	(10,804)	(30,324)	(65,755)
SAN JUAN CAPISTRANO	(11,001)	(30,163)	(65,782)
FONTANA	(11,061)	(30,635)	(66,937)
PICO RIVERA	(11,200)	(30,817)	(67,051)
SAN BERNARDINO CO UNINCORP	(11,346)	(31,419)	(67,927)
YORBA LINDA	(11,486)	(31,491)	(67,963)
SIMI VALLEY	(11,485)	(31,757)	(70,143)
SAN JOAQUIN CO UNINCORP	(11,492)	(31,752)	(71,125)
SAN MARCOS	(11,530)	(31,797)	(71,128)
MONTCLAIR	(11,725)	(32,463)	(71,745)
MORGAN HILL	(11,837)	(32,427)	(72,200)
NORWALK	(11,896)	(32,734)	(72,371)
WEST HOLLYWOOD	(12,007)	(33,041)	(72,387)
COVINA	(12,107)	(33,314)	(72,830)
HAWTHORNE	(12,145)	(33,420)	(72,936)
DALY CITY	(12,505)	(34,443)	(73,537)
LAGUNA HILLS	(12,576)	(34,480)	(73,900)
PITTSBURG	(12,616)	(34,772)	(74,062)
VACAVILLE	(12,792)	(35,155)	(74,366)
GARDENA	(12,933)	(35,588)	(76,680)

AUDITED POOLING IMPACT OVERVIEW
NET CHANGE S'S ORDER

CITY	(A) 2Q95 NET CHANGE	(B) 1ST, 3RD & 4TH PROJECTED CHANGE	(C) TOTAL NET CHANGE (A+B)
LA MESA	(12,986)	(35,812)	(77,140)
YUBA CO UNINCORP	(13,432)	(36,682)	(77,304)
SANTA CRUZ CO UNINCORP	(13,472)	(37,007)	(78,963)
RIVERSIDE CO UNINCORP	(13,520)	(37,562)	(79,710)
SANTA BARBARA	(13,545)	(37,605)	(81,129)
ALAMEDA CO UNINCORP	(13,944)	(38,323)	(81,813)
CUPERTINO	(14,097)	(38,445)	(82,933)
ARCADIA	(14,111)	(38,829)	(83,386)
POMONA	(14,289)	(39,322)	(83,548)
LAGUNA NIGUEL	(14,480)	(39,701)	(84,601)
LAKE FOREST	(14,747)	(40,428)	(84,637)
SALINAS	(14,612)	(40,581)	(85,615)
INGLEWOOD	(14,821)	(40,781)	(85,810)
SAN MATEO CO UNINCORP	(14,915)	(41,079)	(86,625)
SIGNAL HILL	(14,931)	(41,084)	(86,862)
DUBLIN	(15,070)	(41,414)	(87,073)
LOS GATOS	(15,339)	(41,977)	(87,612)
WHITTIER	(15,480)	(42,597)	(87,725)
REDONDO BEACH	(15,560)	(42,817)	(88,047)
CONTRA COSTA CO UNINCORP	(15,644)	(43,121)	(89,538)
SANTA CRUZ	(15,827)	(43,475)	(90,055)
WOODLAND	(15,886)	(43,628)	(90,344)
VALLEJO	(15,903)	(43,708)	(90,346)
VISALIA	(16,112)	(44,603)	(91,275)
RICHMOND	(16,252)	(44,800)	(93,135)
PALMDALE	(16,311)	(44,883)	(93,455)
MONTEBELLO	(16,644)	(45,798)	(94,248)
MODOC CO UNINCORP	(16,769)	(45,708)	(94,833)
SAN LEANDRO	(17,027)	(46,751)	(95,858)
RIVERSIDE	(16,811)	(46,977)	(96,052)
NATIONAL CITY	(17,490)	(48,237)	(96,306)
FOLSOM	(17,811)	(48,805)	(105,525)
NEWARK	(18,019)	(49,520)	(106,202)
FULLERTON	(18,604)	(50,763)	(106,434)
WEST COVINA	(18,562)	(51,078)	(106,922)
MARYSVILLE	(18,878)	(51,556)	(107,446)
ROSEVILLE	(18,756)	(51,882)	(108,144)
LIVERMORE	(18,921)	(51,996)	(111,082)
ALHAMBRA	(18,979)	(52,224)	(114,294)
EL CAJON	(19,827)	(54,691)	(117,973)
WEST SACRAMENTO	(19,905)	(54,666)	(118,363)
OXNARD	(19,812)	(54,775)	(118,939)
DOWNEY	(20,512)	(56,443)	(119,601)
SAN DIEGO CO UNINCORP	(20,598)	(56,807)	(120,269)
CHULA VISTA	(20,608)	(56,835)	(121,714)

AUDITED POOLING IMPACT OVERVIEW
NET CHANGE \$'S ORDER

CITY	(A) 2Q95 NET CHANGE	(B) 1ST, 3RD & 4TH PROJECTED CHANGE	(C) TOTAL NET CHANGE (A+B)
LANCASTER	(21,183)	(58,289)	(122,112)
SAN BERNARDINO	(21,643)	(60,024)	(134,057)
FAIRFIELD	(22,553)	(61,991)	(139,927)
KERN CO UNINCORP	(23,234)	(64,367)	(141,929)
GILROY	(24,307)	(66,568)	(142,987)
GARDEN GROVE	(24,389)	(66,719)	(144,903)
FRESNO	(25,567)	(71,516)	(146,428)
ORANGE CO UNINCORP	(26,017)	(71,333)	(151,121)
BREA	(26,574)	(72,762)	(153,137)
FOUNTAIN VALLY	(26,835)	(73,563)	(153,933)
MISSION VIEJO	(27,797)	(76,190)	(156,886)
BEVERLY HILLS	(28,036)	(77,146)	(166,645)
ESCONDIDO	(28,386)	(78,292)	(178,414)
CAMPBELL	(29,573)	(80,956)	(179,725)
STOCKTON	(30,055)	(83,062)	(185,120)
SANTA MONICA	(30,211)	(83,138)	(190,932)
WESTMINISTER	(31,346)	(85,944)	(193,894)
SANTA CLARITA	(31,478)	(86,617)	(203,940)
BURBANK	(32,674)	(89,908)	(217,874)
BUENA PARK	(33,300)	(91,300)	(250,907)
INDUSTRY	(33,874)	(93,222)	(255,873)
BAKERSFIELD	(35,376)	(98,011)	(267,952)
CERRITOS	(37,681)	(103,687)	(268,339)
ALTURAS	(39,251)	(106,988)	(277,613)
GLENDALE	(44,199)	(121,620)	(283,610)
FREMONT	(48,399)	(132,998)	(319,039)
SUNNYVALE	(50,541)	(137,981)	(354,169)
PALO ALTO	(63,674)	(174,437)	(399,978)
MOUNTAIN VIEW	(70,685)	(193,644)	(404,293)
LOS ANGELES CO UNINCORP	(70,839)	(194,923)	(467,379)
SAN FRANCISCO	(207,695)	(570,720)	(927,939)
LOS ANGELES	(257,871)	(709,923)	(1,405,637)
UNKNOWN CITIES	341,455	939,242	
TOTALS	0	(0)	1

**METHODOLOGY USED
AUDITED/SAMPLING POOLING RESULTS
(SECTION B - BLUE COLOR)**

THE SHORT VERSION

Examination of the Municipal Resource Consultants' (MRC) 895 claims against 530 accounts (Phase II) was conducted by dividing the 530 accounts into two groups. The MRC claims represented a source of pooling reallocation proposed for calendar 1995 based on a Date of Knowledge of fourth quarter 1995. The first group was examined on an actual basis and the second was statistically sampled for further examination. The breakdown and reported dollars associated with each of the groups appear below:

<u>Group</u>	<u>No. of Accounts</u>	<u>Selected For Examination</u>	<u>Reported Pool 2Q95</u>	<u>Approximate %</u>
1	127	127	\$8,249,268	81
2	<u>403</u>	<u>67</u>	<u>1,940,847</u>	<u>19</u>
	530	194	\$10,190,115	100

Section B identifies the audited reallocation, but at first glance the Gross Redistribution of \$26,603,269 (Columns B + G) implies that MRC claims successfully identified approximately 69% ($26,603,269 \div 38,394,067$) of the local tax to be redistributed. A further analysis indicates:

	<u>Number of Non-Inquiry Locations</u>	<u>Yearly Local Tax</u>
1 Revenue Attributable to MRC Claims		\$19,482,972
2. Additional Items Disclosed by Audit		
a. Group 1	159	\$4,752,000
b. Group 2	116	1,280,697
c. Allowed in Findings	21	<u>1,087,600</u>
Unable to complete in Group 1 (8 accounts)		<u>7,120,297</u>
3 Gross Redistribution		<u>26,063,269</u>
4. Unaudited MRC Claims		<u>38,394,067</u>
5. Percent MRC Identified ($1 \div 4$)		<u>50%</u>

THIS ANALYSIS DID NOT DISCLOSE THE IMPACT TO 1/4% COUNTY TRANSPORTATION LOCAL TAXES CAUSED BY DISTRIBUTION OF 1% TAX FROM CITIES WITHIN ONE COUNTY TO CITIES WITHIN ANOTHER COUNTY. GENERALLY, THIS WILL IMPACT THE LARGEST LOSING COUNTIES, E.G., SAN FRANCISCO AND LOS ANGELES.

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**METHODOLOGY USED
AUDITED/SAMPLING POOLING RESULTS
(SECTION B - BLUE COLOR)**

THE LONG VERSION

All accounts in Group 1 were examined by contacting each taxpayer to verify MRC's claims. Group 2 was a sample of 67 out of a population of 403. These accounts were verified to the same extent as Group 1. The sample was selected using a random start and selecting every sixth item.

Questionnaires and Survey Rules were established to perform a consistent examination of each MRC claim. Questionnaire and Survey Rule information appears on the following pages. We obtained taxpayer responses in 93.7% of Group 1, while Group 2 required replacement sample selections for six accounts. Listed below is an analysis of the accounts examined and our response ratio:

<u>Group</u>	(A) <u>Response Requested</u>	(B) <u>Unable to Complete</u>	(C) <u>Replacement</u>	(D) <u>Total Completed</u>	(E) <u>Ratio (D÷A)</u>
	127	8		119	93.7%
2	67	6	6	67	100.0%

Taxpayers' responses disclosed the following

- 1 Local tax amounts by sales location that would be subject to reallocation for 1995 using a date of knowledge of fourth quarter 1995. The local tax amounts were associated with sales by out-of-state companies that were negotiated at in-state locations.
- 2 Additional in-state sales locations of 159 for Group 1 and 29 for Group 2 that were not previously disclosed in the MRC claim were identified by audit.
- 3 Taxpayer responses disclosed that sales involving shipment to California customers from out-of-state locations generally adhered to title passage out-of-state. Our examination did not disclose transactions in which the out-of-state companies required title to pass at destination.
- 4 MRC claims were disallowed for reasons such as:
 - a. No in-state sales participation conducted;
 - b. In-state offices claimed as sales offices were in fact, administrative, customer service, research and development, or other support facilities;
 - c. Sales offices were in fact taxpayer employee homes or independent contractors.
- 5 Five taxpayer accounts were improperly allocating local tax on a pooling basis. Current Board regulations require that a reallocation of approximately \$221,000 per quarter should be processed. The business types and regulation involved are identified as follows:

**METHODOLOGY USED
AUDITED/SAMPLING POOLING RESULTS
(SECTION B - BLUE COLOR)**

THE LONG VERSION (con't)

<u>No. of Accounts</u>	<u>Business Type</u>	<u>Regulation Reference</u>
2	Out-of-state retailers maintaining a stock of tangible personal property in California	1802 (b)(4)
1	Sales negotiated in-state with deliveries from in-state inventories	1802 (a)(1)
1	Use tax on consumable tangible personal property reportable to selling location	1802 (a)(1)
1	Sales from unregistered in-state locations improperly identified to registered locations	1802 (a)(2)